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**CRIME AND THE CRIMINAL LAW IN THE
UNITED STATES**



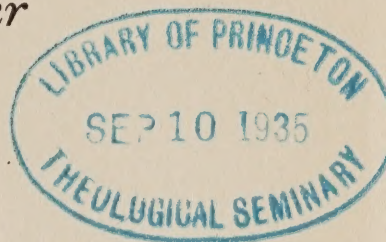
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CRIME AND THE CRIMINAL LAW IN THE UNITED STATES

*Considered primarily in their
present-day social aspects*



✓ BY

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P.T.S. 1917.

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DITION AND THE WORK BEING DONE FOR THEM IN
THE UNITED STATES"

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To
THE MEMORY OF MY FATHER AND MOTHER

FOREWORD

The present work is intended as a limited contribution to an understanding of the situation as to crime and the criminal law in the United States—considered primarily in the light of their present-day social bearings—or as a help toward the creation of a larger and fuller realization of the implications of the subject. It is designedly of objective character, based simply upon what has been revealed in studies upon it. There is no thesis to be propounded, and no particular set of views or system of criminological doctrine to be enunciated. Practical matters and issues of to-day are what receive the substance of attention and regard—with little attempt to enter the great historical or philosophical or theoretical fields which lie so close at hand, or indeed upon which is superimposed the entire structure.

The work is to be looked upon rather as an elementary text—on the one hand, for the student who is seeking a fundamental acquaintance with the subject, and, on the other hand, for the citizen desiring a better appreciation of it.* In but small degree is it meant for the learned lawyer or for the expert in the several fields of criminological thought and practice, except in so far as there may be called for some sort of correlation or reciprocation between criminal law and social science. The topics that are presented are in general touched upon only in the briefest manner, and in fact with but rudimentary consideration. Nowhere is there any idea of extensive, to say nothing of exhaustive or even adequate, treatment.

Throughout the work, in the presentation of the criminal law or in the description of criminal or penal conditions, general terms are as far as possible made use of. In a considerable degree the work is of a statistical character. Extensive use is made of statistics, especially those of nation-wide order, so far as they may have a bearing upon the subject. Where sources are of a general or composite nature, references are not attempted. But where specific statistics are employed, due reference is made to their source. A bibliography, of part of which use has been made as material, is to be found at the end of the volume. Attention throughout is to conditions in the United States alone.

For all that is set down in the present work the author alone is to accept the responsibility; but for the reading of certain parts of the manuscript or proofsheets, grateful acknowledgment is made to the following: Mr. Bennet Mead, of the United States Census Bureau; Miss Katharine F. Lenroot, of the United States Children's Bureau; Dr. E. Stagg Whitin, of the National Committee on Prisons and Prison Labor; Mr. Charles L. Chute, of the National Probation Association; Professor Edwin R. Keedy, of the University of Pennsylvania; Professor Robert H. Gault, of Northwestern University; Professor James B. Miner, of the University of Kentucky; Professor Roy Moreland, of the University of Kentucky; Mr. William B. Cox, of the National Society of Penal Information; Mr. Oscar Hallam, of the St. Paul Bar; Miss Linda Neville, formerly of the Kentucky Board of Charities and Correction; Mr. Francis H. Hiller, of the National Probation Association; Mr. Alfred Bettman, of the Cincinnati Bar; Dr. Hastings H. Hart, of the Russell Sage Foundation; and Miss Agnes Thornton, of the Library of Criminal Law and Criminology of Columbia University.

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PART I
GENERAL NATURE OF CRIME

CHAPTER I

LEGAL CONCEPTIONS AS TO CRIME

DEFINITION OF CRIME

A crime is an act believed to be of such serious consequence to the well-being of society or of the public at large, and to affect so adversely the interests or the life of the state, that it has been brought within the cognizance of the law and there specifically prohibited—generally with a penalty prescribed for its commission. Likewise the omission of an act expressly enjoined by the law constitutes a crime.

The act in question must be of material character—the law cannot regard trifles. Though some crimes are grave and others relatively light, all are considered as of more or less consequence.

The act must affect the public, or rather the state, in greater or less degree—the prosperity, security, peace, safety, order, policy, or dignity of itself, or of its citizens whom it has engaged to protect. Crime in a sense is felt to go to the very life of the state or of organized society. In a measure it is to be regarded as the negation of society, or as a movement towards its dissolution. The state, as it fulfills its functions as to crime, fulfills one of its very highest functions.

The offending act is beyond prosecution or redress or remedy on the part of the person whose lot it is to be directly affected by it. The state alone assumes charge of the matter and takes action as to it.

The act must be recognized in the law as a crime—either expressly set down as such by the statutory law, or regarded as such by what is known as the common law. Acts of which neither takes cognizance are not crimes, however wrongful or evil they may be in themselves

A penalty of some kind is usually attached to the commission of the act declared to be a crime. This is for the twofold purpose of directing attention to the gravity of the act and of deterring any possible commission of it. A crime may be punishable even if no penalty is affixed.

A succinct definition of crime found in some States is that it is an act or omission for which the law has prescribed a penalty. Blackstone defines a crime as an act committed or omitted in violation of a public law either forbidding or commanding it.¹

DISTINCTION BETWEEN CRIME AND OTHER KINDS OF WRONGS

Crime is only one of the divisions in what are known as wrongs. Sin, or wrong in the light of violation of Divine precepts, is the all-inclusive term, covering many things not set down as crimes. Vice is sometimes referred to as a special wrong against one's self, or a wrong in which the offender is also the chief sufferer.

In legal conceptions wrongs fall into two great classes: crimes and torts. A tort is primarily an invasion of some individual right which every person is assumed to have, or an injury which may not be even a "wrong," but simply a harmful occurrence, perhaps of accidental character, for which the perpetrator is in some way to be held responsible, and for which he should be made to pay damages.

The distinctions between a crime and a tort may be particularized as follows: (1) A tort is an offense against a single individual or a group of individuals, without the elements constituting a crime, only an incidental injury being incurred by the state. (2) In the case of crime the state attends to all the prosecution involved, and does so of its own right and in its own name, without regard to the injured party, who has no control over and no direct relations to the proceedings. In the case of tort, the individual injured only may take action; if he declines to do so, the matter is ended, so far as the law is concerned. (3) In crime the intent is one of the essential elements, often the gist, of the offense; in tort the intent is largely immaterial, only the damage suffered being of main consequence. (4) Crime demands punishment; tort, only pecuniary redress, proportioned to the extent of the loss suffered (though occasionally there may be what is known as punitive damages). (5)

¹It is to be added that in the past the conception and the definition of crime have almost wholly, except as regards the matter of intent, been based upon objective considerations—the constitution, the nature, and the extent of the act concerned. Only within comparatively recent years have subjective influences—the state and the conditioning of the doer of the act—been regarded as having a part in or a bearing upon the question.

A tort may be condoned or may be settled directly between offender and injured party, perhaps without recourse to any court action. A crime may not be so treated, any attempt in this direction becoming of itself a distinct offense (though sometimes the wrongdoer may be compelled for certain offenses, as part of his punishment, to make some compensation to his victim). (6) In tort contributory negligence on the part of the injured party may be a complete defense; but not so in crime. (7) In tort action may be taken by a representative of the deceased; that is, right of action survives after death. In crime the state acts regardless of any such principles.

Rights which may be invaded in torts are rights as to person, life, reputation, security, property, or general civil, political, and family rights. Some of the leading forms of torts are assault and battery, false imprisonment, malicious prosecution, trespass upon land, maintenance of a nuisance, fraud and deceit of various kinds, physical injuries, injuries to one's property, slander and libel, conspiracy, seduction, wrongful action on the part of a public officer, etc.

Certain offenses may be both a crime and a tort, there being at the same time an injury to the state to be punished by it, and an injury of private character to be remedied by private redress. Illustrations are assault and battery, criminal libel, fraud and deceit, etc. In such case, a criminal prosecution does not bar a private suit at law, and *vice versa*. Sometimes even in the case of a crime as serious as homicide, persons dependent upon the decedent for support are allowed to bring suit for their loss.

AUTHORITY TO FIX CRIMES

In the United States crimes are specified or denoted as such either according to the principles of the common law or by direct statutory enactment. The common law is sometimes known as the unwritten or non-statutory law, having come into use in England many years ago, and thence brought to the United States. It is set forth in reports of cases which have been decided by some court of authority, in keeping with what have been accepted as the general standards or rules of the law. It represents in large degree what has proved practicable and useful in the past. Precedents are thus established which serve for application to particular cases till the matter comes to be governed by definite statutory enactment, attempt then being made to reduce the common law to more precise written form. Under the

common law, what is regarded as a crime is assumed to be forbidden by the state. After a formal statute is enacted on the subject, priority is given to it; the statute law may be said to supersede the old common law, though the latter always remains to supplement or fill up, or at least to throw light upon, the former when necessary. In other words, common law offenses not covered by the statutory law are still duly punishable. The statutory law is in fact largely built upon common law principles, modified as a result of more modern usages and attitudes, especially in consequence of a better understanding of actual social conditions and of the development of scientific knowledge. So much is this the case that statutory enactments are by the courts construed rather strictly, so far as they may be in derogation of the common law. Newer crimes are all of statutory origin. The present tendency is to have virtually all crimes provided for by statute, or catalogued in the criminal code.¹

Power to determine what constitutes crime is in the hands of the several States, except in so far as the Federal Government may take action as to matters belonging within its jurisdiction. Cities and towns, which are largely held in the light of corporations created by State law, and certain public bodies or commissions have power delegated to them to make special enactments, known as ordinances, by-laws, rules, etc., which apply only in their particular fields.

The legislature of a State may make such enactments as to crime as it may see fit, being restrained only by certain constitutional limitations, found in its own Constitution or in that of the United States. The limitations of the Federal Constitution, duplicated in greater or less measure in most of the State Constitutions, and intended for the most part for the protection of a person charged with crime, in the main forbid the following: bills of attainder (or extinction of civil rights of a convicted person); excessive fines; cruel or unusual punishment; imprisonment for debt; unreasonable searches of property; abolition of jury trial; and *ex post facto* laws (in general the making of a certain act a crime which was not so when committed—the chief forms being creation of a new crime; rendering of an act a greater offense than it was when committed; inflicting of a heavier penalty than was the case before; and substantial changes in rules of evidence).

¹ A distinction is sometimes drawn between *mala in se*, which, if legal offenses at all, are in general offenses at common law, and *mala prohibita*, which become offenses only by statutory action.

The interpretation of criminal laws and their application to particular matters or cases are the business of the courts.

VARYING ATTITUDES TOWARD PARTICULAR FORMS OF CRIME

The constitution and nature of crime undergo constant change in consequence of the evolution of human society. What are crimes in one age may not be so in another. With new ways of living and with new social attitudes, old concepts as to crimes pass away and new concepts arise. Chief illustrations are found in matters of an ecclesiastical or political character and of an economic order or concerned with the social well-being. Crimes with an ecclesiastical or religious basis have mostly disappeared, except in so far as they have a bearing on public morals or policy. Crimes that have their origin mainly in political views or activities have likewise been greatly reduced, the policy of the law having been much moderated as to them—the exceptions having mostly to do with what are regarded as attacks upon the foundations of organized society or the state.

A much more pronounced change in the character and content of crime has taken place in the field of economics, especially as pertains to commercial life. In trade and exchange, because of their rapid and tremendous expansion in modern times, there have appeared, or have been designated, crimes of a new type, scarcely to be recognized in the conditions of past years. Such crimes center largely about various commercial practices, as those involving unfair advantages, especially on the part of corporations, and those involving frauds upon merchants or upon the public.

Changes in crimes where the social welfare is concerned have to do mainly with increasing health and sanitary regulations, and measures as to education, recreation, etc. A special new form of crime has its origin in means and methods of locomotion in modern life.

Similar reasoning applies to different laws for different localities, each State of the Union, as we have seen, being the arbiter as to what is to be regarded as a crime within its own borders. In consequence, there are often varying provisions as to acts regarded as illegal in the several States, together with divergent penalties for the same offenses.

The number of offenses recognized by the law thus varies greatly among different States. A smaller number may be due to the combination or consolidation of several different matters

into one form of crime. Some States have as many as several hundred distinct crimes.

ELEMENTS OF CRIME

In law the elements of a crime are two—wrongful intent and wrongful act. Both are necessary if a crime is committed. If either is lacking, there is no crime.

The intent may not necessarily relate to a particular offense. If it relates to some offense, this is sufficient. A different act may be done from that intended; but if there have been a wrongful intent and a wrongful act, then a crime is committed. Intent may be presumed from antecedent movements or from the nature of the act. A person in general is presumed to intend the natural and probable results of his deeds. In certain crimes a specific intent is necessary.

Several crimes may be involved in one act or a series of acts. Each is separately punishable, or there may be a merger of all into the largest offense. The tendency to-day seems to be to allow prosecution for a greater or less offense as seems feasible or desirable in the interests of justice.

KINDS OF CRIMES

In present-day usage, crimes may be said to be of three kinds—felonies, misdemeanors, and violation of local or special ordinances or by-laws. (Formerly treason was considered in a class by itself.) Felonies are the most serious offenses known to the law, and are punishable by imprisonment for a considerable period, and sometimes by a fine as well, certain kinds being punishable by death. Misdemeanors are of less degree and are punishable by imprisonment for a briefer period, with or without fine. Violation of local or special ordinances or by-laws is punishable on the order of misdemeanors, but generally by less heavy penalties, perhaps simply by a fine.

Apart from the character of the offense, the main differences in the eyes of the law between a felony and a misdemeanor are as follows: (1) In a felony both principal and accessory are possible; in misdemeanors all involved are principals. (2) A person committing a felony may in general be arrested on sight—such is less frequently the case with a misdemeanor. (3) A felony is usually proceeded against by indictment—such is not so generally the case with a misdemeanor. (4) In felony trials greater liberty is allowed in peremptory challenges of prospective

jurors. (5) In felony trials the defendant is generally supposed to be present—such is not so often the requirement as to misdemeanors.

Felonies and misdemeanors differ considerably in different States. An offense of one kind in one State may be of the other kind in another State. Possibly not less than one-third of legal offenses in general are of this type. Occasionally a misdemeanor constitutes a more serious offense in one State than a felony in another. Sometimes a misdemeanor repeated becomes a felony. Except as to the offenses generally recognized as the graver ones, there is no hard and fast line between crimes and misdemeanors; there seems to be no criterion applying universally in the distinction between the two. Apparently the differentiation for the most part lies in the penalty to be attached to either form. Already, however, in a few States there is discernible a tendency to disregard the refinements between the two, and to consider both simply as offenses or crimes.

ATTEMPT AT CRIME

An attempt at crime, though failing of full achievement, constitutes a crime in itself. In an attempt there must be some wrongful act, accompanied with an evil intent, tending towards accomplishment, but falling short thereof. Preparation alone is not sufficient; there must be a direct, an overt movement towards the intended result. Attempt at a crime may be regarded as an unfinished or imperfect, or a thwarted or frustrated, crime, which would have been effectuated but for the intervention of some unexpected force. An attempt at a given crime is generally punishable in somewhat less degree than would be the perpetration of the full offense. (At common law, attempts at crime were usually held to be misdemeanors. In some States by statutory action they have been made felonies.)

Some controversy has arisen as to the nature of an attempt to commit a crime when actual commission is physically impossible (as an attempt to steal from an empty pocketbook). Formerly such an attempt was the more often held to be no crime. Now it is generally regarded to be a crime, provided the intent is clear, and the movements are adapted to the end in view.

SOLICITATION TO CRIME

Solicitation of one person by another to commit a crime becomes in itself a crime, especially as regards felonies. The solici-

tation is looked upon only in limited degree as analogous to an attempt at crime, in the absence of an overt act; rather it constitutes a separate and specific offense. A solicitation meeting refusal is unaffected in its character as a crime. A solicitation to a crime may of course go so far, when successful, as to make one a principal, or at least an accessory, in the full offense.

ENTRAPMENT INTO CRIME

Entrapment of a person into committing a crime is no defense for such a person. Should, however, instigation to a crime prove of an active, rather than of a passive, kind, the law will look less severely upon the act into which one is lured. Sometimes a distinction is made between cases where the instigator has bad purposes of his own to accomplish, and cases where attempt is being made to discover whether evil practices are being engaged in. Provocation to a crime is no excuse, though it may have a mitigating effect on the punishment inflicted.

CONTRIBUTORY NEGLIGENCE IN CRIME

Contributory negligence on the part of an injured person in connection with a crime makes the crime no less real. The most frequent instance of this rule is the case of criminal recklessness, when the injured party has himself been lacking in proper caution or has himself been guilty of certain wrongdoing.

CONSENT TO CRIME

Consent given to the perpetration of a crime before its commission may sometimes in theory serve as a defense; but this is not generally accepted if serious injury to one's person results or is likely to result, or if one is legally incapable of consenting, or if fear or intimidation or fraud is involved, or if a different crime is committed from that to which consent is given, or if excesses are indulged in, or if there is involved a public disturbance or a breach of the peace. Condonation or acquiescence in a crime is no defense. A crime of theft is not to be settled by return of stolen goods or by reparation.

CRIME BY NECESSITY

An otherwise wrongful act committed by necessity, or under compulsion, or under duress—much depending upon the sex,

age, health, etc. of the person coerced—is not in general considered a crime. Here a person's will is overcome, he is in the power of another; and consequently he is not responsible for what he does. Threats as to the future, however, are not an excuse. The rule does not apply to the taking of life. No outside coercion or pressure is sufficient for that. Under necessity, a law, especially a municipal ordinance, may suffer infraction, in order to prevent serious injury to life or property, provided that the harm committed is not greater than that averted, or provided that it was not possible to avert the threatened evil otherwise.

Similarly, an act which would otherwise constitute a crime may be done under public authority, under certain circumstances, as in the prevention of crime, in the suppression of a riot, in the defense of person or property, or in effecting an arrest.

IGNORANCE OF LAW OR OF FACTS IN CRIME

"Ignorance of the law excuses no one." This is the general rule of law. A possible exception is where a specific intent is required with respect to certain crimes.

A mistake of fact, especially a material fact, in connection with what would otherwise be a crime, is a sufficient excuse, unless there is involved gross negligence (including disregard of means of information), or failure to make inquiry when a legal duty exists, or an intent to do some particular wrongful act, or some important public policy. If one is doing a lawful thing in an unlawful manner, one must in general answer for the consequences. Much depends both upon attendant circumstances and upon statutory construction. The tendency is to regard extreme carelessness when others' rights are concerned as amounting to actual crime.

CHAPTER II

PARTIES TO CRIME

POSSIBLE PARTIES TO CRIME

Parties to a crime may be of several kinds or degrees, depending upon the extent of actual participation or assistance or instigation. These may be joint offenders, principals, accessories, accomplices, partners, or agents. The distinctions between the several parties to a crime are becoming less pronounced with the course of time.

JOINT OFFENDERS

Joint offenders are all equally responsible for their wrongdoing, or for the consequences thereof.

PRINCIPALS

Where several persons join or combine or associate in the commission of a crime, all are generally principals, and are responsible for all the several acts that may naturally or probably occur in consequence. In some jurisdictions a principal is of two kinds—a principal in the first degree and a principal in the second degree. The former commits the crime with his own hand; the latter stands by and aids and abets (perhaps simply as a watcher), sometimes being regarded as participating “constructively.”

ACCESSORIES

As between a principal and an accessory, the essential difference is that the principal is present at the commission of the crime, or is the instigator or director of the proceeding, while the accessory is generally absent or plays an inferior rôle. The distinction exists only as to felonies; in other crimes all are principals. An accessory usually receives less severe punishment than a principal.

An accessory may be of two kinds, an accessory before the

fact or an accessory after the fact. An accessory before the fact aids or abets in some manner prior to the commission of the crime, as in providing the principal with means of executing his project, or in furthering him on his way. An accessory after the fact knowingly harbors or protects the principal, or otherwise helps him in effecting his escape. In some jurisdictions there is no difference between the two forms of accessories. In other jurisdictions there is only an accessory after the fact; all having previous part are principals.

At one time it was doubtful whether a principal in the second degree or an accessory before the fact could be held responsible for a different crime from that intended, if it was not likely so to result; but the modern tendency is to hold them to all the consequences of their wrongful acts.

ACCOMPLICES

Accomplices or partners may be principals or accessories in a crime, more often the former. They must do more than merely encourage or approve what is being done. If one repents and seeks to dissuade his associates before the commission of the crime, he may be absolved from what is further done.

AGENTS

An agent or instrument in the commission of a crime, if of mental capacity, who knowingly carries out the commands or directions of his principal usually incurs due responsibility. An agent is innocent only if sincerely unaware, and is without grounds to suspect any wrongdoing.

CHAPTER III

RESPONSIBILITY FOR CRIME

INSANE AND MENTALLY DEFECTIVE PERSONS

There have been in the past two particular groups in the population which have been regarded in the law as incapable of committing crime—persons who are insane or who are of generally defective mental capacity, and children or very young persons. Insanity has been felt to involve a state of mind in which the necessary element of criminal intent is wanting. There has been much discussion in the courts upon the subject of what the mental condition should be to relieve one of responsibility for crime. The law in the United States has to a considerable extent been based upon the conclusion once set forth in England, known as the rules in *McNaghten's case* (1843). According to the findings in this case, a person is regarded as insane at the time of the act in question (1) if he had defect of reason or insufficient mental powers so as not to know the nature and quality of his act, or what he was doing; (2) if he did not know right from wrong in a particular case, as in the act in question; (3) if he did not have will power to control his acts; or (4) (provisionally) if there existed insane delusions as to surrounding facts, or delusions which, if real, would have justified or mitigated the act in question.

Statutory law in the United States has somewhat modified the foregoing rules, especially as a result of more exact scientific knowledge. In many jurisdictions a person may be said to be free from responsibility for his crimes if he is unable to understand the nature of his act, or the right or wrong involved in it, or to distinguish between (a) right and wrong in the abstract, (b) right and wrong as regards the act in question, (c) right and wrong in their moral or legal implications; or if he acts from an irresistible impulse, due to mental defect. An increasing number of jurisdictions are deciding the matter upon the bases of specific mental psychoses, and with the advice of mental experts.

A person definitely determined to be insane or to have been insane at the time of his misdeeds is not answerable. A person partially insane or suffering from some particular psychosis comes largely under the same conception. A person who is deprived of freedom of the will and who acts under an uncontrollable impulse may in some jurisdictions be regarded as insane, though in such case his condition must be the result of some definite disease. What has been called moral or emotional insanity or ungovernable passion is generally not a sufficient defense.

The responsibility of feeble-minded and mentally defective persons in general for crime is governed in considerable degree by the rules applying to insane persons.¹

DRUNKARDS, ETC.

Drunkenness is no excuse for a crime, though sometimes there may be mitigation in punishment in consequence of it. This condition is never a defense if caused voluntarily, unless one has passed from it into a state of genuine insanity. If a specific intent is required for a given crime, it may be lacking in the case of drunkenness. One is not responsible for his misdeeds if made drunk involuntarily, being then really under duress.

Crimes committed under the influence of drugs are governed much as those committed during drunkenness. A crime committed while in a state of somnambulism is regarded as excusable.

CHILDREN

At common law children or young persons (called infants) were divided into three classes as respects their responsibility for crime: (1) those under seven, who were regarded as entirely incapable; (2) those from seven to fourteen, who were presumed to be incapable, a presumption that was rebuttable; and (3) those from fourteen to twenty-one, who were presumed to be capable, a presumption that was likewise rebuttable. The matter of the responsibility of such persons is now generally governed by special laws dealing with juvenile delinquency, especially in connection with the juvenile court.²

¹ The matter of mental responsibility for crime is considered further in a later connection.

² With respect to the matter of juvenile delinquency and its treatment under the juvenile court, see Chapter XXI.

MARRIED WOMEN

At common law married women (femes covert) were at times presumed not to be responsible for their crimes if committed in the presence of their husbands. To-day women, married and unmarried, are generally *sui juris* as to crime, and are theoretically on a level here with men.

CORPORATIONS

A special kind of offender of which the law has to take cognizance is the corporation. Formerly it was generally liable when there was involved personal violence, malicious wrong, or evil intent—though always its officers could be fully held when guilt could be traced to them. The present-day tendency is to regard a corporation as a “person” in the matter of crimes committed by it.

PART II
CLASSIFICATION OF CRIMES

CHAPTER IV

HOMICIDE

IN GENERAL

The most serious offense known to the law is homicide, or the taking of human life ("a reasonable creature in being"). It is fundamentally an offense against the person, but because of its importance it can best be treated apart.

To constitute homicide, death must be the consequence of the act in question. It must occur within a certain period, at common law within a year and a day—else it might be attributable to some other cause. Death in a given case is homicide though before its occurrence other factors had set in to prevent recovery; though the physical condition of the deceased person was already weak; though other influences had operated which of themselves might have caused a fatal ending; though there had been failure to secure proper medical attention; or though medical attention was negligent or unskilled. Death from grief or terror is not ordinarily homicide, though if such state is well grounded, and death is a natural consequence, the rule may perhaps be different.

SUICIDE

Suicide, or the taking of one's own life, is none the less homicide—only the offender has passed out of human jurisdiction. The law may take cognizance of the matter in certain circumstances—as (1) when a person is compelled to commit suicide, the person who so compels being held responsible; (2) when one assists another in committing suicide, the general rules of the law as to homicide then applying; (3) when a person attempting to kill himself kills or injures another, such person being duly responsible for these results; (4) when in a suicide pact between two or more persons each agrees to take his own life, and one or more survive, the survivor being held as principal or accessory in a homicide. An unsuccessful attempt at suicide is in many jurisdictions a special indictable offense.

JUSTIFIABLE HOMICIDE

Homicide is in general of two kinds: justifiable or excusable, and culpable. Homicide is justifiable or excusable in the following circumstances:

(1) In self-defense, when there is apparent immediate danger of bodily harm (especially with deadly weapons), or when there is reasonable apprehension as to such danger. The slayer, in order to plead self-defense, must not have been the aggressor, and must have done all possible to avoid trouble (must have "retreated to the wall"), except in his own habitation, in which case he may instantly repel any onslaught. Defense of one's self may include defense of one's family (or even of another's person upon whom an unjustified assault is being made), or defense of one's property in the case of trespass upon it in the attempted perpetration of a felony. In ordinary trespass upon one's property, force may be used to eject the intruder but not to kill. The law (though not the moral law) allows one to destroy the life of another to save his own.

(2) By officers of the law in the discharge of their duties—in the execution of justice, in the carrying out of a legal sentence (as in the execution of the death sentence), in the preventing of the escape of a prisoner, in the effecting of an arrest, or in the protecting of the peace. If a felony is threatened, any person at hand is privileged to take action in prevention. In arresting or guarding prisoners officers of the law are less and less given to the use of possibly fatal methods; and statutes are being increasingly enacted forbidding officers to kill unless their own lives or the lives of others are clearly in danger. To the list of justifiable or excusable homicides of this class may be added the taking of life in times of war when soldiers are authorized or directed to proceed against their "enemies."

(3) Through accident or misadventure, as in sport, or in chas-tisement by one so empowered. Such homicide must have occurred when a lawful enterprise was being engaged in, and in a lawful manner.

CULPABLE HOMICIDE

Culpable homicide may be said to be of three degrees—murder, voluntary manslaughter, and involuntary manslaughter. In some jurisdictions manslaughter is designated as murder in the second degree.

MURDER

The essential element of murder is willfulness, deliberateness, premeditation—an intent to take life with “malice aforethought.” This malice or evil premeditation may be express or implied. It may be implied when there is intent to do great bodily harm or to commit a serious felony; or when no provocation is apparent; or when one acts in a “murderous” manner, without direction towards any particular individual, or in the knowledge that one’s deeds may be grave or fatal, or in indifference to their probable or natural consequences. Willful neglect to do a legal duty, in consequence whereof death results, is murder. Use of a deadly weapon or lying in wait is strong evidence of premeditation or malice. Killing of a person not intended or killing of an officer while resisting arrest is none the less murder. Killing in a duel is to-day generally likewise so. Lynching and infanticide may be special forms of murder.

In some jurisdictions there are two, possibly three, degrees of murder. Murder in the first degree involves willfulness, deliberation, general depravity of mind, attempted felony, time for planning, lying in wait, special cruelty or atrocity, etc. Murder in the second degree involves conditions in which malice or deliberation is less patent, or in which the intent to inflict death is less pronounced—perhaps in the heat of passion or in extreme recklessness. Murder in the third degree includes other forms of culpable homicide not included in murder in the first or second degrees, especially where there is no intent to kill, perhaps when engaged in a felony of relatively minor character.

VOLUNTARY MANSLAUGHTER

Voluntary manslaughter is homicide without malice or premeditation, the element essential to murder. It occurs in a sudden quarrel or affray, or in the heat of passion, without time for cooling off—when passions are beyond control, and the will is overcome. There must be adequate and grave provocation, which must not be sought or induced. Words alone are not sufficient. Threatened killing of one’s self or of one’s relatives may perhaps be regarded as ground for action. Voluntary manslaughter may take place when but little injury has been attempted. It may be even charged to extreme recklessness. In voluntary manslaughter accessories (before the fact) are not possible.

In certain States manslaughter may be of several degrees.

The distinctions between the several degrees here and between the several degrees of murder, as well as the distinctions between manslaughter and murder itself, are not always easy to recognize.

INVOLUNTARY MANSLAUGHTER

In involuntary manslaughter the killing is unintentional on the part of the slayer, but with some measure of legal blame attaching to him, either from negligence in some respect or as the result of engaging in an unlawful act. This form of homicide may take place under the following circumstances: (1) while engaged in the performance of an unlawful act, a misdemeanor rather than a felony, and one not likely to endanger life; (2) in the negligent performance of or in the failure to perform an act which is a legal duty and not merely a moral duty (if the failure is willful, then murder is committed); (3) while engaged in a lawful act in a reckless, wanton, or negligent manner. (If the negligence is gross, the homicide may be murder.) In the last mentioned case much depends upon the reasonableness of the act in question and upon the surrounding circumstances.

Homicide in the form of involuntary manslaughter may be the result of assault or battery, or of participation in some sport, or of chastisement administered by one in authority for the purpose, or of the suppression of riot, etc.

In some jurisdictions there are several degrees of manslaughter, largely apportioned according to intent, provocation, passion, etc. Manslaughter in the first degree may include homicide committed while engaged in a misdemeanor, while in the heat of passion, while in the procuring of an abortion, while assisting in a suicide, etc. In the second degree is included manslaughter while trespassing upon the land of another, in the heat of passion (especially without the use of dangerous weapons), in the negligent use of machinery or of animals, in the overloading of boats, in the use of excessive steam, in the performance of medical services in an intoxicated condition, in the unlawful use of gunpowder or of explosives, in the procuring of an abortion, in the use of poison, etc. In the third degree are included other forms of homicide not murder or manslaughter in other degrees. In a few jurisdictions there is even a fourth degree, including forms of manslaughter not included in other degrees.

CHAPTER V

OFFENSES AGAINST THE PERSON

IN GENERAL

Offenses against the person are for the most part some form of assault upon one or of restraint of one's liberty. The leading form, homicide, has already been considered in a classification by itself.

ASSAULT

In criminal law assault is often coupled with battery, both being regarded as one and the same act, and both constituting as a rule a single offense. The assault is, strictly speaking, the attempt at battery; the battery is the accomplishment of the assault. Assault is theoretically possible by itself. There is to-day a tendency to break away from the conception of battery, and often assault is the term applied to the full offense. If serious, it may be called felonious assault.

Assault is any physical violence, involving actual contact with the person of another, however slight, and regardless of any injury or pain inflicted, perpetrated with malice or evil intent, by use of hands, weapon, or missile. (Formerly at common law there had to be a breaking of the skin, not merely a scratch, to constitute the offense.) Setting a dog or other animal on one may constitute the offense. Such deeds as administering poison or securing illegal arrest have technically been held to be assault. Special forms are wife beating, malicious wounding, etc. The conception may extend to serious threats to do bodily harm, as pointing of a firearm at one, shooting at one, indiscriminate shooting, or shaking the fist at one.

Physical force, amounting in other circumstances to the offense itself, is permitted by the law in resisting assault. To justify a defense, however, there must be some movement involving a threat—not mere preparation or words—but an overt, physical motion causing apprehension of bodily harm or of the use of violent measures. It is sufficient if there is reasonable

apparent present ability for the creation of this apprehension. Presenting a loaded, sometimes even an unloaded, firearm would constitute an adequate threat. In offering resistance, or in warding off the impending evil, no more force is allowed than is necessary—though sometimes what is regarded as a deserved “chastisement” of the original offender will be winked at, or even commended. Defense of one’s self extends to defense of one’s family and of one’s property, and often to the defense of any one wrongly attacked.

Imposition of force is also permissible in certain circumstances, as in chastisement by one in authority for the purpose, in the restraint of an insane person, in ejecting a disturber from a common carrier, in effecting an arrest, etc.

Sometimes excessive violence or intentional injury or gross negligence in a legitimate enterprise (as sport) may be regarded as assault. Such may also be the case with respect to neglect of a legal duty when serious injury results (as ill treatment of a defective person, or leaving a dependent member of one’s family exposed to inclement weather), or with respect to acts permitted by law, but carried too far (as in lawful chastisement, or in the justifiable removal of a disturbing individual from a public place).

Assault may be regarded as of aggravated nature when weapons are used, when serious, though unintentional, injury results, or when the person injured is already in a weakened condition.

There may be an assault, accompanied by suitable means to the end, to commit a specific offense, as murder, robbery, etc. This constitutes a definite offense, punishable in less degree than would be the crime if accomplished.

In certain jurisdictions assault is divided into two or more degrees, depending upon the malice or evil intent involved or upon the character of the weapons employed.

A special form of assault, now little heard of, is mayhem, or an injury to a part of the body, as ear, nose, etc. (theoretically of such nature as to cause disfigurement or as to render one less capable of fighting).

FALSE IMPRISONMENT

False imprisonment is sometimes of the nature of assault, and is often prosecuted as such. It is sometimes regarded as aggravated assault. It may be defined as the unlawful restraint

of one's liberty without one's consent, or the submission of one's will to another, procured by force or threats or the putting in fear (including fear as to one's family or property). Any detention thus brought about is sufficient; it is not necessary that it be in a room or in a building, or that it involve any actual imprisonment. False imprisonment does not apply to the administration of discipline by one in authority. False imprisonment may sometimes pass into duress, or compulsion to do a particular act, perhaps in such circumstances as to constitute a crime. Malicious prosecution is sometimes made a crime on the order of false imprisonment.

KIDNAPPING

Kidnapping is likewise an allied offense with assault, or perhaps rather to be regarded as an extension of false imprisonment. It is the carrying away and holding, possibly for ransom, of persons, especially children (who if consenting are presumed to be too young to be able to do so). Kidnapping does not usually apply to a parent taking away a child who has been placed in a foster home, unless there has been legal adoption, and sometimes not to one divorced parent taking away a child from the other parent.

ABDUCTION

Abduction is often included under kidnapping. It rather relates to the carrying or enticing away of females, especially under the age of consent, for immoral purposes.

CHAPTER VI

OFFENSES AGAINST PROPERTY FOR GAIN

IN GENERAL

Crimes against property for gain are of almost limitless variety, in general beginning with more or less open and direct stealing of some kind, perhaps attended with violence, and eventually passing into more refined types, often of a comparatively pacific or orderly character, and including in increasing degree offenses which involve deceit or trickery. In the American States there have often been a number of separate offenses embraced under this head, though there is to-day being effected a steady reduction of them. In a few States all or practically all are now simply designated as theft.

BURGLARY

At common law there were the following elements in the definition of burglary: (1) *breaking*, including even the turning of a fastening or a latch, or an entry into a house by deception or threats, and with reference to both outside and inside doors, windows, or other openings (not included is an entry through an open door, etc., nor is application to a mere chest or box or yard gate); (2) *entry*, including entry of any part of the body or of an instrument, to aid in furthering the crime, even with but the slightest force; (3) *dwelling house*, including separate rooms at a hotel or like place; (4) at night time (or when it is too dark to recognize one's face—moonlight, however, being included); (5) with felonious intent (*animo furandi*).

Under modern statutes the definition of burglary has been considerably widened, and some of the old refinements reduced. The offense to-day is not confined to a dwelling house nor to the night time, but is extended to buildings in general and to hours of the day as well as of the night; though the offense may be regarded as aggravated when committed in the circumstances specified in the common law. Burglary is regarded as the more heinous when firearms are involved.

If "burglary" is found not to answer for a particular offense, some such term as felonious or unlawful entry, breaking and entry, housebreaking, etc. may generally do so. Safeblowing may be an example of a specific offense. Possession of burglar's tools may be regarded as burglary. There may be special forms of burglary according to the building concerned, as dwelling, shop, store, office, factory, warehouse, freight cars, etc. In some jurisdictions there are several degrees of burglary—perhaps that at nighttime being first degree, and that in the daytime second degree.

ROBBERY

Robbery is the felonious taking away of personal goods or money from the person of another, either forcibly or by putting one in fear of injury to his person or to his property. What is stolen may be of any value, however slight. Special forms of robbery are highway, mail, and similar robberies, together with hold-ups.

LARCENY

At common law the definition of larceny was as follows: (1) taking, or trespass or invading of possession (including even the opening of a box, etc.), the taking being either open or concealed (as the picking of a pocket); (2) carrying away, or removal of the article in question from its original position (as the lifting of a pocketbook); (3) personal goods (including articles of realty, if severed and distinct, gas, water, etc. as objects of larceny); (4) when articles are in possession or part possession of another; (5) with intent to steal or to keep wrongful possession (*animo furandi*) and without claim or color to title. Stealing of horses or of automobiles, picking of pockets, shoplifting, etc. are special forms of larceny. The offense may have relation to the situation involved, as larceny from the person, or from the dwelling, shop, store, office, factory, warehouse, motor vehicle, etc.

Taking of lost or abandoned property is not larceny, if there is no clew to the owner or if reasonable inquiry would not have disclosed the ownership. Objects discovered or belonging to no particular individual may be the property of the first taker. Wild animals become objects of larceny when tamed or reduced to a state of possession. Legal instruments may now generally be subject of larceny. Taking by fraud or trick is to-day regarded as larceny, though taking by false pretenses directly from the

owner may not be so. Wrongful possessing by mistake is not larceny, unless there later arises the intent to keep wrongfully. Taking without intent to gain thereby may still be larceny.

Larceny is often divided into grand larceny and petit larceny, depending in general upon the value of the article taken.

Larceny is sometimes said to be compounded or of aggravated nature when occurring under especially serious circumstances, as in one's dwelling house.

In some States there is now little distinction as between larceny, embezzlement, fraud, possession of stolen property, etc. All may be included under the term larceny. In certain States the term theft is the general term for all such offenses.

POSSESSION OF STOLEN PROPERTY

The offense of receiving or possessing stolen property is now regarded as practically the same as the original burglary, robbery, or larceny, as the case may be. (At common law the offense was in general only a misdemeanor, there being involved little breach of the peace.) To constitute the offense, it has been necessary in general (1) that there be an actual change of possession; (2) that this change take place while the article is away from the hands of the original owner; (3) that there be knowledge of the theft, such knowledge sometimes being presumed or inferred from attendant circumstances; and (4) that there be involved felonious intent. A crime is not committed if the person who receives the stolen property intends to return it to the owner. To-day the offense has relation especially to "fences"—or to traffickers in stolen goods, who may have more or less direct dealings with the actual thieves, or to operations of even wider ramifications.¹ Bringing stolen goods into a given jurisdiction may be a form of the offense. Knowingly having part in the transactions makes one guilty of the offense.

CONVERSION

Conversion is the appropriation to one's own use of property belonging to another which has been placed in one's hands for a special purpose or for a limited period. The person guilty of conversion may have been given temporary possession by the owner, especially as a bailee, hiring or borrowing or otherwise rightfully holding the property of another for a time. Conversion

¹ The subject of "fences" is considered more fully in a later connection.

is a species of larceny, though without any original trespass or felonious intent. If there is any change in or intrusion upon an article held, then the bailment is ended, and larceny arises. In certain States conversion is regarded as practically equivalent to larceny.

EMBEZZLEMENT

Embezzlement is really a form of conversion. In some States one term is used to cover both offenses. In certain States embezzlement is treated as a form of larceny. Embezzlement is distinguished primarily from conversion in that it relates to property entrusted to another in a capacity of trust. It must occur as a breach of trust or as the violation of a fiduciary relationship, with felonious intent an essential element, the original possession having been rightful. (Embezzlement is generally made a crime by statutory law.) Accordingly, embezzlement occurs most often in connection with money placed with a bank or similar moneyed institution, or with an officer or clerk in such an institution—though, strictly speaking, it may take place as between master and servant in general, *cestui que trust* and trustee, principal and agent, bailor and bailee, etc. Methods of embezzlement are many.¹

FORGERY

Forgery is the material altering of a written instrument and giving it legal efficacy, to another's prejudice, and with intent to deceive or defraud. The instrument purports to be what in fact it is not. Its passing or being put into use is sometimes referred to as its utterance. In the offense are included both the changing of a document already in existence and the complete fabrication of a document. Often the crime consists merely of the signing of a wrong name to a document.

The crime is considered complete when the instrument has an apparent legal standing.

Forgery may exist as to checks and drafts upon banks, deeds, false entries in books of accounting, warehouse and other receipts, testimonials, brands, trade names, seals, labels, telegrams, tickets, advertising matter, counterfeiting (also a special offense),

¹ Illustrations of possible methods by clerks in banks are: altering entries in inactive accounts; carrying double or false loose leaves (with proper adjustments at times of inspection); failure to enter deposits by check or otherwise; permitting confederates to open false accounts; etc.

etc. Possession of instruments for the commission of forgery is likewise forgery. With the advance of commercial life the possibilities of forgery constantly increase.

In some jurisdictions forgery may be of several degrees. Forgery in the first degree relates mainly to checks and like instruments; forgery in the second degree, to various legal records; and forgery in the third degree, to falsification of books, or erasing or changing of records by officials of corporations, false letters, false certificates, etc. (At common law forgery was largely a misdemeanor; it is now generally a felony.) Counterfeiting (or possession of tools for the purpose) is not an entirely dissimilar offense.

FRAUD, CHEATING, SWINDLING, ETC.

Under the category of cheating, defrauding, swindling, obtaining money by false pretenses, etc. are included a great number of offenses, a number of ever widening range and variety with the development of business and commerce. To an extent larceny, forgery, or other like wrongdoing is involved. In some jurisdictions all offenses of this nature are consolidated into one general classification; in other jurisdictions there are several distinct offenses specified; and in other jurisdictions still some such offense as larceny is sufficient to cover virtually all wrongdoing of this kind.

At common law the gist of the offense was the fraudulent obtaining of another's property or money by false symbols or tokens. At common law the elements in the offense were somewhat as follows: (1) deception as to a material point (not merely expression of opinion or "puffing"); (2) falsity of the representation known to the maker; (3) representation intended to deceive; and (4) representation acted upon. Silence was not itself regarded as an element in the offense in the absence of a duty to speak.

From these considerations is evident the weight attached to the doctrine of *caveat emptor* in determining whether the offense was committed. To-day the policy of the old law is rather being reversed. Vendors and other persons engaged in trade or commercial transactions, and resorting to misrepresentation as to their wares, are being held to an ever greater degree of responsibility for their utterances and actions. In other words, the movement in the commercial world in this regard is distinctly towards full honesty and fair dealing in business relations. It

is as to certain forms of this offense, especially those relating to the sale of securities to the public, that "blue sky" laws are being enacted.

Some of the offenses of this character are: obtaining lodging with intent to defraud; pawning borrowed property; conducting mock auctions; unlawful use of the name of a charitable body; unlawful selling of tickets for charitable affairs; false statements by employers as to conditions of employment; false statements for business purposes; receiving of deposits by insolvent bank; fraudulent bankruptcy; false statements as to securities or as to land offered for sale; fictitious issues of stock; use of false names, etc. by corporations; issuance of false reports by corporations; fraudulent conveyance, removal, concealment, or destruction of taxable property, or knowingly participating in such transactions; false proofs on policy of insurance and other insurance frauds; false certificates of professional training; false pedigree of animals; issue of false bills of lading; use of false weights and measures; mixing of goods by warehousemen and others in like capacity; altering number of automobile; impersonating of another to obtain money; issuing of worthless checks; drawing of checks without funds; issuing of false receipts; misbranding of articles; sale of possibly deceptive articles; misleading advertisements; use of mails to defraud; fee splitting; fortune telling, clairvoyancy, and like practices; drugless healing; maiming of one's self to secure alms or to escape performance of some duty; various confidence games; etc.

A special group of offenses at the present day are crimes as to credit, sometimes known as credit frauds. They are chiefly of three classes—misrepresentation, diversion of assets, and bankruptcy. They include false financial statements, concealment or understatement of assets, fictitious business references, pretended thefts or fires, and other forms of misrepresentation to secure credit.¹

Forgery and counterfeiting may be classified here or in a different category. Defrauding of government might likewise be included. So too to an extent may arson, theoretically an offense

¹Special forms of commercial credit swindling are the ordering of merchandise and the selling of it at a low price, after which proceeding the offender decamps or goes into bankruptcy; use of the name of a recognized customer to obtain merchandise; special or rush orders or scattered orders; and other devices by means of which dealers are imposed upon and are deprived of payment. Another particular offense to the commission of which modern business conditions lend themselves is the offering of some sort of gratuity to persons in a subordinate capacity for wrongful ends.

against property not for gain, when engaged in to collect insurance money.

Some of the offenses listed here are also offenses against public policy or morals or offenses against public health or safety.

EXTORTION

Extortion is the giving up of money under fear induced by a threat. (It also exists with respect to an officer of the law acting under cover of his official duties.) A well-known form is blackmail. A species occurring in certain communities is called "racketeering," or the levying of tribute upon small merchants or groups of traders or workingmen.¹ The fear inspired may relate to one's personal safety or that of one's family, or to one's property, or to one's reputation. Threat may consist of physical harm, or the exposing of a secret, or the accusation of a crime. The truth of a threatened charge constitutes no defense—though it may affect intent in certain circumstances. (Extortion is an entirely statutory offense.)

¹The subject of "racketeering" is considered further in a later connection.

CHAPTER VII

OFFENSES AGAINST PROPERTY NOT FOR GAIN

IN GENERAL

Offenses against property not for gain are relatively few in number, consisting for the most part of the burning of buildings and general injuries to public or private property. Some of the latter type are also offenses against public peace or order, against public health or safety, or against public policy or morals.

ARSON

At common law, arson means the burning of a dwelling, or of an out-house in connection with a dwelling, belonging to another person, at nighttime, willfully and not merely as the result of negligence—even though while engaged in a different offense. Any burning, even but a charring, is sufficient. Under statutory law, arson is extended to vacant houses, stores, warehouses, vessels, railway cars, etc. (even movables); to the buildings of the owner; and to the hours of the day equally with the hours of the night. Burning one's own home (or other property) to recover the insurance upon it, in general an offense for gain, may be arson, or may be made a special offense. Even to-day, however, the crime of arson is regarded as aggravated if committed at nighttime or when a dwelling is occupied. In some States there are degrees of arson according to these two latter considerations, or according to the general seriousness of the offense. Arson may sometimes be known as incendiarism.

MALICIOUS MISCHIEF

Malicious mischief consists of general wanton injury to the property of an individual or of the public, or reckless disregard of the rights of others or of the public in property. Wantonness or malice may be inferred from the nature of the offense. In connection with private property there must be direct injury

done, not merely a removal. Illustrations of malicious mischief are poisoning of animals; unnecessary injuries to or infliction of pain upon animals; destruction of fences; injury to shrubbery, crops, etc.; setting fire to timber, etc.; defacing of natural scenery; injuries to public highways, telephone wires, bridges, etc.; fast driving over bridges; harmful use of highways by traction engines; throwing of glass upon highways; injuries to lighthouses; injuries to levees; throwing of railroad switches; injury to railroad right of way or to trains; breaking of water, gas, or steam pipes; tearing down of public notices; destruction or defacement of guide posts or public signs; destruction or defacement of advertisements in public places; illegal advertising in public places; interference with natural flow of stream; poisoning of waters; flooding of mines; injury to graveyards; defacing of public library matter; unnecessary calling out of fire department; opening of letters; tapping of telephone or telegraph wires; injury to mail boxes; injury to railroad baggage; removal of brands, etc. from articles or containers; placing of spurious coins in slot machines; etc.

Two offenses of somewhat similar nature, but applying rather to real property, and largely of the character of torts, are forcible entry and detainer and trespass upon land—both possibly also leading to public disturbance or breach of the peace. Wrongful use of the property of another, much on the order of a tort, may likewise be classified here.

CHAPTER VIII

OFFENSES AS TO DWELLING OR HABITATION

At common law there have been two particular offenses as to the habitation or dwelling in which one lives—including both the actual dwelling house and outhouses or auxiliary structures, or “other house in the common curtilage”—arson and burglary. The aim of the law in placing them within its special concern has been to preserve the sacredness of the home. Under the present statutory law, however, the two offenses can best be regarded under different categories—arson as one of the several offenses against property not for gain, and burglary as one of the several offenses against property for gain.

CHAPTER IX

OFFENSES AS TO FAMILY RELATIONS

IN GENERAL

Offenses as to family relations have mostly to do with proper marriage and support of family.

ILLEGAL MARRIAGE

Express prohibitions have been enacted of marriage of persons within certain specified classes, as persons below a specified age (with or without parental consent), persons within certain degrees of consanguinity, persons of deficient mental capacity, or other persons considered socially unfit for marriage—and in some States persons of different race or color (miscegenation). Persons performing the marriage ceremony in such cases or abetting it, who are aware of the circumstances, unauthorized persons performing marriage ceremonies in general, and persons having part in a marriage ceremony who fail to comply with all legal requirements, are all guilty before the law. Similarly to be classified is the wrongful securing or procuring of divorce.

Bigamy is a particular offense, in which the following elements are generally necessary: (1) legal marriage ceremony with one person, (2) when there has been a previous valid marriage with another person, (3) without subsequent divorce or annulment, (4) while the first spouse is still living or has not been continuously absent for a certain period. At common law the period within which the absent spouse has not been heard from is usually seven years. Modern statutes, possibly under the so-called Enoch Arden laws, sometimes make the time shorter. The second spouse may, in addition to the principal, be criminally liable if knowledge of the circumstances exists.

Adultery and other crimes as to sex, which may affect the family, constitute a special class of crimes.

FAILURE TO SUPPORT FAMILY

Failure to support one's wife or other dependent members of one's family is a recognized offense at law. It may have refer-

ence to one's economic ability and one's station in life, though the providing of the barest necessities is expected in any case. How much beyond this may be required, as providing of full medical attendance, for instance, depends upon the statutory enactments of different States. The husband may be compelled to provide for his wife even when she leaves him for cause. After divorce he may be required to pay alimony. Desertion or abandonment of family is an analogous offense. Certain offenses as to one's family are also to some extent offenses against public policy or morals.

CHAPTER X

OFFENSES AS TO CHILDREN

There is an ever increasing list of offenses against the child, set down in the law—in keeping with the increasing solicitude for the child in modern society. Some of the most important are the following: abandonment or desertion by parent or guardian, especially of a very young child; failure to support a dependent child; endangering life or health of child; permitting attendance at certain harmful resorts or amusement places; unlawful employment of child, especially below a fixed age, or without fulfillment of certain legal requirements, or under illegal conditions; refusal to send child to school; allowing child to beg or to engage in like practices; selling liquor, drugs, etc. to child; contributing to delinquency or dependency of child; abuse of or cruelty to child; concealing of birth of child; etc.

In addition, there are special offenses committed by a child, as incorrigibility or truancy, requiring the attention of the law.

The present tendency is to regard alike offenses committed by the child and offenses committed against the child as matters to be covered under the general question of juvenile delinquency (considered in a later place).

CHAPTER XI

OFFENSES AS TO SEX

Offenses as to sex are mainly as follows: prostitution (in some States a special offense, in others included under vagrancy, disorderly conduct, etc.); fornication (in some States made a special offense); adultery (a particular offense in most States); keeping house of ill fame, living in such place, or inducing one to enter such place, especially in case of a minor; rape (overcoming of the will of the female being essential in the offense, unless below the "age of consent"); seduction; abduction (also allied to kidnapping); transportation of female for immoral purposes; abuse of child; indecent liberties; abortion (allowed if necessary to save life of mother); bastardy; general lewdness of conduct; certain unnatural offenses. Some offenses as to sex are also offenses against public policy or morals, or offenses as to the family.

CHAPTER XII

OFFENSES AGAINST PUBLIC PEACE OR ORDER

GENERAL OFFENSES

Offenses against the public peace or order, or offenses which may tend to create public disorder, some also offenses against public policy or morals, are in the main: carrying of deadly weapons, reckless discharge of firearms, disturbing of school session or religious meeting, interfering with a public speaker against his will, use of abusive language in public, disorderly conduct, drunkenness (together with various offenses involving the use of intoxicating liquors), etc. Particular offenses are: affray, or a fighting between two or more persons in a public place; unlawful assembly of three or more persons which is likely to result in violence or apprehension thereof, or even in the commission of crime by open force, or possibly with tendency toward unlawful acts; riot, or an outbreak on the part of a number of persons, creating a greater or less public disturbance.

CRIMINAL ANARCHY

A special offense relating to breach of the peace, which has received legislative attention in a few States of recent years, is criminal anarchy. It involves instigation to the use of force or violence against organized government, assassination of public officials, destruction of property, unlawful assembly, etc. Instigation may be oral or by writing, and may consist of advocacy or teaching, publishing, organization, assisting in the assembly of persons, or the use of one's premises for such purposes. Syndicalism and sabotage are like offenses.

CRIMINAL LIBEL

A certain proceeding which is regarded as criminal because of possible incitation to disturbance of the public peace is criminal libel, or the circulation of written or printed matter in a harmful manner.

In a broad legal sense this is holding the living to hatred, contempt, obloquy, or ridicule, or accusing one of crime or odious act, or blackening the memory of the dead, or causing injury to religion, government, or morals. To-day the offense relates mainly to defamation of a living individual. Written or printed matter includes pictorial as well. Malice may be implied from the nature of the case. Not only the originator of the libel, but any person assisting in its circulation may be guilty. The libelous matter must be reasonably capable of being conveyed to ordinary persons, and must be actually conveyed, the matter thus being brought to the attention of a third party.

It has been a question whether the truth of a charge constitutes a good defense in criminal libel (as it has generally been in tort proceedings). The present tendency is to regard it so. In some States the truth is a good defense in all cases; in other States it is so only when there are good motives back of the charge.¹

Libel may be both a tort and a crime. It becomes criminal when it tends towards a breach of the peace. Slander, which is oral only, is for the most part a tort merely, though in some jurisdictions it may become criminal if it relates to an infamous crime, to a woman, or to a financial institution (especially when false charges are circulated as to its insolvency).

¹In the case of possible libel absolute privilege exists as to judicial proceedings, legislative proceedings, or petitions to legislatures. No one can be held at all for what may be said in such circumstances. Qualified privilege, or charges kept within reasonable bounds, and not carried to unnecessary excess, or to include extraneous malicious or scurrilous matter, is allowed as to reports of public meetings or as to matter resulting from social or legal duties (though in such reports it is incumbent upon one to make reasonable efforts to ascertain the facts). Similar privilege extends to literary criticism, letters of recommendation or letters as to private family matters, reports of inferiors to superiors, etc. Comment upon public matters, including candidacies for public office, is generally privileged, especially if fair. The law, however, is less indulgent to false charges affecting one's private life, or to purely scurrilous matter.

CHAPTER XIII

OFFENSES AGAINST PUBLIC HEALTH OR SAFETY

Offenses against public health or safety are of ever increasing content, the public requiring more and more protection in this respect under modern living conditions. Some are also offenses involving malicious mischief or offenses against public policy or morals. The main ones are: illegal sale or manufacture of foods, drugs, etc.; sale of adulterated or misbranded articles; use of false or deceptive brands or labels on articles of food or drink; sale of poisons, narcotic drugs, etc. without proper label, or without legal prescription; sale of candies, etc. with noxious ingredients; sale of diseased meat or unwholesome food in general; slaughtering of animals under unsanitary conditions; sale of certain forbidden articles to minors; use of false weights or measures; injuries to common carriers (railways, etc.); overloading of vessels; excessive steam pressure on engines; improper handling or storing of explosives and combustibles; making or disposing of dangerous weapons, especially firearms, without license (sometimes including toy weapons); having dangerous weapons in one's possession (unless with license); unlawful discharge of firearms; obstructing attempts to put out fire; failure to provide fire escapes in certain places; injury to life saving apparatus; permitting unguarded holes in places of public traffic; obstructing of highways by railroad trains; failure of railway trains to whistle properly, to provide gates at certain crossings, to care for live stock in transportation, etc.; use of common drinking cup for general purposes; unnecessarily loud noises; spitting in public places; failure to provide heat in cars of common carriers at certain seasons; failure to provide seats for women in manufacturing or mercantile establishments; failure to install machinery safeguards in factories, etc.; excessive speed or insufficient control of motor vehicles; illegal lighting or parking of motor or other vehicles; employment of intoxicated persons in certain occupations; hazing; dangerous circus exhibitions or other exhibitions dangerous to life or limb; unlimited endur-

ance contests; dangerous surf bathing; poisoning or ill use of animals; allowing vicious dogs to be at large; exhibition of wild animals in public places; undue destruction of migratory or of insectivorous birds; etc.

CHAPTER XIV

OFFENSES AGAINST PUBLIC POLICY OR MORALS

IN GENERAL

Offenses against public policy or morals are in a twilight zone. No other class of offenses against the law so reflects the state of public opinion or of the public conscience at a particular time or in a particular community. No other class in consequence is so liable to undergo change under different conditions. The criterion as to offenses of this nature is a broad one, being in general governed by what is known as the police power of the state, or the power of Government to deal with questions of public welfare. Some of the offenses against public policy or morals may also be classed among offenses against public health or safety or among offenses against public peace or order; and some, among offenses included under malicious mischief, or included under fraud, cheating, swindling, etc. Certain of these offenses are regarded, furthermore, as public nuisances, special powers being authorized for their suppression or "abatement."

Offenses against public policy or morals are for the most part acts or practices deemed detrimental to the well-being, virtue, rectitude, decency, honesty, equity, convenience, or dignity of the public or of the state. Included are those hurtful or offensive in some particular to a distinct element of the population; those involving public cheating or fraud, or involving unfair or inequitable operations in business and trade; those injurious to classes of the population in special need of protection; those connected with the improper use of public means of communication or of public places; those concerned with the carrying on of certain occupations tinged with a public interest; etc.

MANUFACTURE OR SALE OF INTOXICATING LIQUORS

Possibly the leading offense set down in the law as contrary to public policy or morals is the manufacture, sale, or transportation of intoxicating liquor. By the Federal prohibition law,

carrying out the provisions of the Eighteenth Constitutional Amendment, intoxicating liquor is defined to be that containing one-half of one per cent by volume. This Act also forbids the possession of such liquor and of instruments or means for its manufacture. Nearly all of the States have laws of greater or less stringency upon this subject. There have also been regulations as to sales of liquor on Sunday or to minors, to habitual drunkards, etc.

Drunkenness may be an offense in itself, though sometimes included in a different category.

There are somewhat similar prohibitions as to the purveyance of habit-forming drugs, or as to their sale by unauthorized parties or without prescribed regulations.

GAMBLING

Gambling, or gaming, as it is often called in the law, covers a variety of offenses. The law aims especially at the facilitation or encouragement of gambling by third parties. Included are open gambling or gambling in public places; setting up or conducting machines for gambling purposes, whether or not for profits upon them (in a few States such machines at race tracks being expressly excluded from the provisions of the law); use of premises for gambling purposes; conducting or promoting lotteries; conducting of policy shops or bucket shops or establishments for gambling in futures, where no bona fide or actual sales are contemplated; conducting of quarters for general betting purposes; etc.

MISCELLANEOUS OFFENSES

Other offenses against public policy or morals are: permitting or conducting immoral or indecent plays or entertainments; publication or dissemination of obscene literature; indecent conduct in public places; soliciting upon streets or in other public places; pandering; procuring of abortion; public profanity or blasphemy; fortune telling, clairvoyancy, mesmerism, etc.; promotion of duelling (including acceptance); cock fighting; prize fighting, especially if carried to a finish, or with intent to inflict injury (an exception perhaps being made if simply to display skill, or if conducted for a limited number of rounds); exhibition of deformities in a public place; intoxication while in the performance of certain duties, as those of physician, engineer, officer, etc.; possession of burglar's or counterfeiter's tools; sending out

of anonymous letters; opening of letters belonging to another person; improper divulging of telegraph messages; learning telegraph codes; tampering with gas meters, etc.; wrongfully calling out fire apparatus, ambulance vehicles, etc.; detention, obstruction, or abstraction of United States mail matter; transmission of indecent or libelous mail matter; causing of vexatious suits; exercise of improper influence in certain legal transactions; permitting offer of reward as to criminal offense in certain circumstances; circulating false reports as to solvency of bank; dealing in margins by trustees of property or estates; various illegal practices as to taxation and revenue; failure to report births or deaths; performing illegal marriage ceremonies; advertising as to divorce, venereal disease, etc.; bringing paupers into State; discrimination at resorts or places of public entertainment on account of race, color, etc.; failure to provide accommodations of equal quality in public places for different races; failure to provide separate schools or public accommodations for persons of different races; holding up of particular groups in the population to scorn or ridicule; discrimination against persons in military uniform; desecration or improper use of National flag; advocacy of destruction of government by violence or of assassination of public officials; ill treatment of dead body; desecration of graveyard; violation of game and fish laws, especially as to closed season, quantity or size or age of "catch"; violation of laws for protection of public parks, places of historical interest or scenic beauty, etc.; corruption or bribery of those engaged in contests of public interest; suppression or collusion in public building; fraudulent insolvency; engaging in fraudulent or unauthorized banking business; use of drama, etc., without owner's consent; unlawful use of corporate name; fraud in obtaining membership in private association; substitution of wrong child to parents (when entrusted to temporary care of another); false personation of officer of the law; false personation as to various matters (as marriage, obtaining bail, acknowledging written instrument, etc.); use of mails to defraud; employment of women contrary to legal regulations; employment of children below specified age or under improper conditions; employment in general illegal conditions; payment of wages by corporations in other than legal money; interstate commerce in matter or articles injurious to the public welfare; allowing by railroad and similar corporations of rebates, concessions, discriminations, false billing, etc., for benefit of certain shippers; failure of common carriers and like corporations to keep rates on file; falsifi-

cation or failure to provide required statements by corporations; discrimination by telegraph or telephone companies in furnishing news to all desiring to purchase; overcharges by certain corporations, especially common carriers and public service corporations; blacklisting and like actions by corporations; boycotting; enticing away of servant; practicing or carrying on of certain professions or occupations without license, as those of attorneys, physicians, dentists, veterinary surgeons, pharmacists, trained nurses, architects, engineers, undertakers, chauffeurs, insurance agents, various kinds of merchants, peddlers or itinerant merchants, pawnbrokers, auctioneers, plumbers, barbers, restaurant keepers, operators of certain amusement devices (as poolrooms, bowling alleys, etc.), conductors of certain amusement enterprises and resorts, employment agencies, etc.; violation of regulations applying to pawnbrokers and second-hand dealers (as operating without license, selling articles before expiration of period of redemption, failure to keep proper entries, destruction of records, failure to make periodical reports, failure to report suspicious occurrences, receiving articles from children, drunkards, drug addicts, etc.); etc. (In connection with crimes against public policy are to be mentioned three old common law offenses: (1) barratry, or an attempt to stir up quarrels and litigation; (2) maintenance, or officious intermeddling in a suit in which one is not legally concerned; and (3) champettry, or an agreement to divide the property involved in a law suit for carrying on such law suit.)¹

VAGRANCY

Vagrancy is a special offense in the category of crimes against public policy or morals, but covering a rather broad range. It is often defined as living without visible means of support, inability to give an account of one's self, begging from door to door, loitering, vagabondage, wandering about and lodging in outhouses and like places, soliciting, lewd or wanton conduct, being a common drunkard, being guilty of disorderly conduct, habitual use of drugs, engaging in clairvoyancy and kindred practices, keeping of stolen property, being guilty of a former offense in which fraud was an element, being found hanging around certain places, possibly of questionable character (as saloons, dance halls, railroad stations, and like places), etc. Such a wide definition of vagrancy affords occasion for the rounding up of "sus-

¹It is not to be thought that all the offenses listed in these chapters are necessarily found in a single State.

picious characters" by officers of the law in the event of the commission of some crime. What is known as disorderly conduct may be of similar extended import.

CONSPIRACY

A particular offense, possibly best classified under offenses against public policy, is conspiracy, or an agreement between two or more persons to do an unlawful act or a lawful act by unlawful means, or to accomplish some end that will adversely affect the public at large. The agreement must be more or less definite, and not merely an intention. The very agreement constitutes the crime in question, apart from the commission of an overt act towards the achievement of the purpose in view, which of itself might prove to be a distinct crime and separately punishable (though the two matters may in fact be merged). Each party to the conspiracy is liable for the acts contemplated. If one withdraws from the conspiracy, and so announces, he ceases to be responsible. The act in view may be a crime or a malicious tort, especially in the procuring of a false charge against another, or involving breach of contract injurious to the public, cheating by criminal means, or acts decidedly prejudicial to public policy or public justice or public trade. Perhaps the most frequent instance relates to pools, trusts, monopolies, etc. in restraint of trade, or agreements to regulate, fix, or control prices in a given field, or to limit production in a certain commodity.

CHAPTER XV

OFFENSES AGAINST ADMINISTRATION OF GOVERNMENT

IN GENERAL

Crimes against the administration of government are of various kinds, embracing for the most part defrauding of government, especially on the part of private citizens; misconduct by public officials with respect to their offices; obstruction of or interference with the administration of justice, especially in connection with courts of law; offenses in connection with elections; offenses in connection with legislative proceedings; contempt of court, a special offense as to judicial proceedings; perjury, found in both judicial and other proceedings; and offenses as to the military establishment of the state—together with special offenses against the Federal Government and offenses against international law.

DEFRAUDING OF GOVERNMENT

Defrauding of government may be done by individual citizens or by corporations through evasion of taxation, revenue duties, or other moneys due to the Government, and through counterfeiting. This offense is also possible with public officials.

OFFICIAL MISCONDUCT

Official misconduct is sometimes broadly divided into non-feasance in office, or neglect or failure to do one's duty; misfeasance, or acting in wrongful manner; and malfeasance, or doing of wrongful thing. One form of official misconduct has to do with the securing of financial gain from or through official position, including various kinds of graft—as improper interest in public contracts; taking advantage of office to promote or maintain private financial dealings; appropriation of public funds; false accounting as to public funds; extortion under color

of official position; selling of public property below true value; requiring of extra or additional compensation in fees to do legal duty; receiving of reward or bribe for performance or non-performance, or expediting or retarding performance, of legal duties; fraudulent or improper assessment of taxes; permitting influence of textbook publishers in adoption of school books; selling of teachers' licenses or of examination questions to prospective teachers; extortion from prisoners; charging more than legal rate for Government commodities; etc.

Another form of offense is oppression or injury to citizens under color of official position: as false or improper arrest or detention; false seizure or levy upon property; illegal dispossession of property; malicious issue or service of adverse legal papers; and general injury to person, property, or rights.

Still another form of offense is concerned with failure to perform required legal duties, or improper performance thereof, perhaps involving breach of trust: as failure to execute judicial writs; making false returns as to writs issued; discharging offender on insufficient bond; suppression of legal instruments; failure to keep proper records or falsification of records; misconduct in selection or control of jury; allowing illegal privileges to prisoners; allowing prisoners to escape; obstructing of examination of public funds; refusal to surrender books, etc. to successor in office; destruction of public records; counterfeiting of seals, etc.; intoxication while in performance of duties; wrongful treatment of persons committed to care of officers (including cruelty or ill treatment of prisoners); and usurpation or illegal holding of office, or failure properly to qualify for office. (A special offense at common law was misprision of felony—neglect to prevent a felony or to bring an offender to justice.)

OBSTRUCTION OF ADMINISTRATION OF JUSTICE

Leading offenses involving obstruction or interference with the administration of justice, generally on the part of outside persons, are: attempt to free prisoner from custody of officer (breach in the prison walls for the purpose being known at common law as prison breach); refusal to assist peace officers when called upon; resisting officer in effecting arrest; securing absence of witnesses; tampering with witness; concealing, removing, or destruction of evidence; attempting to influence jury (technically known as embracery); impeding execution of warrants or other legal processes; interference with officers in discharge of

duties; interference with judicial proceedings; disobedience to court order; disclosure of proceedings of grand jury or other unlawful disclosure; bribery of official (giving or receiving anything of value for the purpose of influencing one's official activities); violation of parole; etc.

A special offense is the compounding of crime, or agreement by one who knows of a crime, especially one who has suffered from its commission, not to take action with regard to it, in return for a consideration (the consideration often being the return of stolen goods).

OFFENSES AS TO ELECTIONS

Leading offenses as to elections are: bribery of voter; destruction of ballot; stuffing of ballot; repeating; impersonating of voter; making false returns of election; delivery of liquor to voter; maintenance of troops at polls; promising of office to voter; etc.

OFFENSES AS TO LEGISLATIVE PROCEEDINGS

Offenses as to legislative proceedings are: bribery; illegal lobbying; wrongful altering or destruction or intentional loss of legislative bills or other documents.

CONTEMPT OF COURT

Contempt of court and perjury are offenses involving lack of proper respect for judicial proceedings. Contempt of court may apply to witnesses, spectators, and officers of the court (including attorneys). It includes: bad behavior or breach of the peace in the presence of the court or jury; interruption of court proceedings; willful resistance or disobedience to a court mandate; refusal to be sworn; publication of false reports of court proceedings, or of prohibited pictures; etc.

PERJURY

Perjury is the only form of lying recognized by the law. It is willful, absolute, and false testimony or statements given in judicial proceedings, or in any proceedings where the law requires an oath, after taking lawful oath from one in authority, upon some point material to the issue—such testimony or state-

ment not being believed to be true. An affirmation by one who has conscientious scruples against the taking of an oath is equivalent to an oath. If a witness is found to be incompetent or does not have to testify, he may still be liable for perjury. False statement of opinion is perjury when the opinion is material.

Subornation of perjury, or the procuring of perjury, is a like offense.

False swearing in certain proceedings, as in bank reports, application for marriage licenses, etc., is also regarded as perjury.

OFFENSES AGAINST MILITARY ESTABLISHMENT OF STATE

The most important offense against the military establishment of the state has been treason, or levying war against one's country, or adhering or giving aid and comfort to its enemies—an offense heard of less and less with the diminution of war. Sedition is rather direct opposition, especially armed, against one's government. Other offenses in this category are inducing soldiers to desert; discouraging persons from enlisting in military service; influencing violation of military laws; wearing of uniform without authority; discrimination against uniform of soldier; etc.

SPECIAL OFFENSES AGAINST FEDERAL LAWS

Special offenses against Federal laws—apart from offenses of a general nature prohibited alike by State and Federal laws—are violation of neutrality laws; selling arms or liquor to certain peoples; deprivation or denial of rights of citizens of the United States; violation of customs or revenue laws; violation of currency laws (including counterfeiting, which is both a Federal and State offense); violation of postal service laws; violation of immigration laws; violation of laws dealing with foreign and interstate commerce; and certain other matters left entirely or largely to Federal jurisdiction.

OFFENSES AGAINST INTERNATIONAL LAW

Offenses against international law are governed by the law of nations in general. They include piracy or plundering or armed violence on the high seas, or other crimes or unlawful acts not engaged in at time of war; violation of neutrality; violation of safe conduct or of passports, or the offering of violence or insult

to a public minister; counterfeiting foreign money; forging citizenship papers; offenses as to extra-territoriality jurisdiction; slave trade; selling of liquor or firearms to certain peoples; etc. With the passage of time, an ever larger number of matters will be covered by international law.

PART III
CRIMINAL PROCEDURE

CHAPTER XVI

AGENCIES FOR APPREHENDING OFFENDERS AGAINST THE LAW

OFFICERS OF THE PEACE OR POLICE FORCE IN GENERAL

For its defense and protection society is obliged to provide a force of peace officers or police. Their purpose is to prevent the commission of crime as far as possible, to discover and apprehend violators of the law, and to hold and present offenders to the regularly constituted agencies for their prosecution. In the United States peace officers are of several kinds, all in relation to the jurisdiction or political unit in which they serve—county, State, Federal, and city or municipal, together with a possible body under private auspices.

COUNTY PEACE OFFICERS

In the United States, just as the general matter of dealing with crime has been a county function, so the task of keeping the peace, or of preventing crime or apprehending offenders, has devolved primarily upon the county. The public agency to which this office has fallen is that of the sheriff. The sheriff has a number of duties besides "keeping the peace," both civil and criminal, such as serving writs, executing decrees, etc. The sheriff has his deputies, and, if necessary, may summon a posse comitatus to assist him. For divisions of counties there may be constables; and for towns, marshals.¹

A county police force, somewhat on the order of a city police force, is also possible, especially as a rural police. Such may be organized along two lines—as an extension of the peace force of

¹In England, from which country the United States has taken most of its criminal system, peace officers have developed as a sort of appendage to or accessory of the judicial order. The King's peace in England first had reference to offenses committed in his presence; later to offenses committed in his realm. Systems of keeping the peace have rather been of a local nature, and different from the centralized military plans found on the Continent of Europe.

the individual county, or as a State-wide, State-controlled force. A county police force requires little in the way of new organization, being rather an expansion of the existing force with an enlargement of its duties, including a higher degree of specialization, with some of the functions of the city police. Possibly part of the necessary funds, as well as a central detective force, might be supplied by the State.

Certain counties, and a steadily increasing number, are now providing for a real county-wide police force, ever ready to respond to rural calls, patrolling public roads, assisting in the prevention or detection of crime, and promoting the public welfare in various ways. (A rural police force is considered more fully later.)

STATE PEACE OFFICERS

In addition to county officers of the peace, which are of course in a sense State officers as well, the State has officers of its own for special purposes, as factory inspectors, game wardens, and the like. The State militia constitutes a reserve force, to be called upon by sheriffs, mayors, judges, etc., to maintain order when local officers are incapable.

In a limited, but increasing number of States there are special bureaus, with something of the functions of centers of information or clearing houses in connection with crime, especially for the purpose of criminal identification.

RURAL POLICE

Of recent years there has been consideration of a State police force on a different and much larger scale. With the building of good roads and the development of means of rapid transportation, with the constantly greater number of persons passing through rural regions, with the extension of urban ideas and ways of living to the country, and with the expansion of criminal activities through use of the swift automobile, attention has been increasingly directed to the possibility of a special rural police force. If the country is to be made attractive for a large part of the population, it is asked, should it not have police protection equal to that of the city?

Possible functions of a rural police, apart from keeping order generally, are execution of warrants, obtaining of evidence, apprehension of offenders, watching for possible automobile thefts, protection of property against automobile bandits, inspection of

motor vehicles, regulating of traffic, finding of lost persons, giving of information and other assistance to travelers, enforcing of laws as to game and fish, inspecting of public roads and bridges, proper treatment of sheep-killing dogs or of other animals at large, proper handling of vagrants and tramps, watching out for fires, rendering of first aid to the injured, surveillance of questionable resorts, etc. Rural police officers may coöperate with State and local officers generally in the detection and apprehension of criminals.

A State police force, functioning for the State as a whole, and not confined to county boundaries, has certain advantages over a county police. It is the more likely to be a trained organization; quicker and more expeditious in its movements; more amenable to newer conceptions and methods of action; less sensitive to local feelings; and more likely to ferret out and run down offenders when not restricted to small areas.

The State police should be a light, mobile, dexterous, ever-active body that may cover various sections, and be ready to respond to a call from a particular region at a moment's notice. In general, rural police as an organization is not to deal with disturbances in cities. The State militia or national guard, always an expensive and cumbersome body, and one ill-trained and ill adapted for the purposes of rural police, is to be reserved for emergencies.

For a State police force a special organization is necessary. A head, perhaps known as superintendent, may be appointed by the Governor, who is to be responsible for the operations of the force. This force may be organized on the order of troops, with something of a military basis. Members are to be accepted only who possess satisfactory qualifications, physical, mental, and moral. Equipment is to be provided by the State. The service may itself be regarded as attractive for young men who desire an active outdoor life for a certain period.

About one-third of the States now have some sort of systematized State police, for the most part eastern States. Organization in individual States varies considerably, especially as to connection with local peace officers.

The State police system in the United States, despite some mistakes, has in general proved successful, and is being given an increasingly favorable reception. It has so far largely escaped political influences. Chief opposition to the introduction of the system has come from labor organizations, which have feared that the force might be employed in cities in connection with strikes.

FEDERAL PEACE OFFICERS

The Federal Government, apart from its military forces, which may be called upon to maintain order in individual States when so requested, has a semi-police force in its marshals in connection with Federal courts; agents in connection with the department of justice; secret service officers; prohibition agents; revenue agents; postoffice inspectors; border patrol; and similar officers. Between the several groups in the Federal service there is little coördination.

There is also a bureau of criminal identification with respect to Federal prisoners. Its facilities are open to the use of State and local police officials. As yet they have been availed of in relatively slight measure, but an increasing number of cities are now coöperating. It is under the Department of Justice.

ORGANIZATION OF CITY POLICE FORCE

The police system of cities is a peace agency of intensive character. It has been of independent origin, and without connection with any of the general systems for keeping the peace. It is of modern development, not having been introduced into the United States till shortly before the middle of the nineteenth century.¹ Since that time it has spread over the country, and is now extended to many of the smaller cities and towns.

The police systems of most American cities are simply municipal departments, organized and directed by the municipal government alone. In a few cities, however, they are under the direct control of the State. In the one case there is a greater degree of "home rule," and greater acquaintance with local conditions; in the other there is greater possibility of enforcement of locally unpopular laws.

The police force is usually under boards of police commissioners, directors or boards of public safety, or like bodies, which are in general appointed by the mayor. The directing head or chief may be selected by such body, or by the mayor directly. Sometimes he is chosen from the ranks; sometimes he is brought in from outside, perhaps from civilian life, or perhaps as a former military man. Under the head is a descending scale of officers—deputies, inspectors, captains, lieutenants, sergeants, and pa-

¹ The police system came from Europe. Its forerunner was the watchman or guard employed by private citizens for protection of person or property.

trolmen. With modern social developments, a constantly greater number of divisions or bureaus or "squads" is necessitated—detective, homicide, traffic, sanitary, pickpocket, automobile theft, narcotic drug, bomb, etc.

In a few cities special bureaus for the keeping of records have been instituted.

In certain cities there have been set up special police training schools, with greater or less attention devoted to such subjects as criminology, criminal procedure, evidence, sociology, psychology, psychiatry, geography, etc.—in addition to methods and tactics of practical police work, including detective work.¹

The ratio of policemen to population varies considerably in American cities. Most communities are rather underpoliced than overpoliced. In the largest cities the ratio of policemen per 1,000 of general population ranges approximately from 1 to 1¾.

PURPOSES OF POLICE FORCE

The police force has a heavy responsibility resting upon it. It must keep crime from showing its ugly head in the community, or at least must ferret it out and get the upper hand on it. Apprehension, discovery, repression of crime, protection of the innocent from the clutches of the criminal, keeping under any possible disturbances that may interfere with the citizens' well-being and comfort—this has been the primary concern of the police. But with the growth of cities and with the growing complexity of their problems, new duties are constantly being laid upon its shoulders, duties not necessarily connected with crime. Some of these added duties are enforcement of various city ordinances, especially as to street traffic; notification of proper authorities as to defective or improper conditions in public ways and works; inspection of places likely to be of immoral character; rescuing lost persons, especially children; furnishing directions to strangers; providing first aid; assisting the disabled and suffering generally; carrying out legal provisions as to health and safety or general welfare; etc. In fact, the modern policeman is engaged in a genuine and wide social service program.

In addition, the policeman or other officer whose business it is to keep the peace, or perhaps the officer receiving cases at

¹ A fairly satisfactory method of identification of criminals has been built up. The first was mainly by photographs. Later was introduced the Bertillon system of measurements of the human body. The final method is the finger print system.

the police station, may sometimes act as a sort of informal court, deciding whether some trivial case should be followed according to strict technical law, or should be dismissed out of hand.

POLICEWOMEN

Within recent years there has been developed a new appendage to the police force. This is the policewoman (first introduced in Los Angeles in 1911), now found in most American cities. Her desirability and usefulness have been generally proved.

The duties of the policewoman center about women and children whose difficulties can oftener better be attended to by her than by a man. Her work is frequently in connection with juvenile courts and probation. Much also lies in the way of preventive and protective work. The policewoman can give information, advise and admonish, help find runaways and missing persons; attend to fortune tellers, shoplifters, etc.; answer advertisements, possibly immoral; ensnare mashers; and inspect railway stations, hotels, parks, dance halls, and other places where trouble may arise.

PRIVATE PEACE OFFICERS

In addition to the regular police or peace officers in the United States, there is generally authorization for private guards or watchmen and detective agencies. They may be engaged by private individuals or corporations, often for the protection of property. They may also be given certain powers as to keeping order on private premises, sometimes being of special service at various public assemblages. They may coöperate with the regular police force, being of course always subordinate to it. At times in some cases private guards are granted power to make arrests; and may in fact serve as quasi-police, possibly with relatively little public control.¹

¹In connection with the matter of the apprehension of offenders against the law, especially when some flagrant offense has been committed, are to be mentioned the efforts at times of bodies of private citizens (at one time known as vigilantes). Of similar tenor are the efforts of newspapers in particular. Rewards for the apprehension of offenders may come from both public and private sources.

CHAPTER XVII

DIRECTION OF CRIMINAL PROCEEDINGS

JURISDICTION AS TO CRIMINAL OFFENSES

Jurisdiction as to general criminal proceedings in the United States, except as regards offenses against Federal laws, lies basically with some county of the State, or for some minor offense with a political subdivision of a county (or a municipality). The county may be said to act for the State, the proceedings being brought in the name of the latter. The State in general has immediate concern only in so far as an appeal may be taken from the trial court to its highest court of appeal. The State, however, if necessary, may cause criminal proceedings to be initiated, and may be directly represented at them.

The court which is to have charge of the prosecution of a given crime must have jurisdiction over both the person and the offense.

By the *locus* of a crime is meant the place where it was committed. Stated differently, the prosecution of a crime lies in the venue of its commission. If a person is injured in its commission, the locus is the place where he happened to be at the time (even though a person fatally injured is removed to another place where he dies).

Persons involved in a crime but not present at its commission are usually governed by its locus or venue. The locus as to a letter mailed may be the place where mailed or the place where received, according to variant rulings. The locus as to stolen goods may be any jurisdiction affected. In general, where several jurisdictions are involved in an offense, any may take appropriate action. The courts are becoming more and more liberal in allowing the punishment of a crime in any jurisdiction concerned.

Where the perpetrator of a crime has removed to another State, extradition proceedings may be taken to bring him back to his original State. This matter is regulated by the Constitution of the United States; no provision, however, is made for enforcing the demand of the Governor of one State upon the Governor of an-

other; and there have been occasions when requests for extradition have been refused. Where an offender is brought back forcibly or otherwise but not by regular extradition process, he may none the less be subject to the jurisdiction to which he has been returned. The matter of the extradition of criminals between different countries is generally regulated by treaty.

STATUTE OF LIMITATIONS AS TO CRIMES

For major, or at least capital, crimes, the "statute of limitations" does not run; that is, persons who have committed such crimes may theoretically be held answerable therefor, no matter how much time may have elapsed since their commission—though courts often prove more or less lenient when the offender has shown himself a good citizen, and has been guilty of no subsequent misconduct. For lesser crimes the statute of limitations generally operates; if there is no prosecution within a fixed time, further action is barred. For felonies within the statute the term is usually from two to ten years; and for misdemeanors, from two months to two years. If the statute of a State is silent upon the subject, time is supposed to be indefinite.

Time begins at the consummation of an offense, or at the completion of the last act of its commission, or with its discovery. If an offender has left the jurisdiction, time may be suspended meanwhile.

ORGANIZATION OF CRIMINAL COURTS

Courts are set up for the purpose of determining whether crimes have been committed, and of meting out punishment or otherwise disposing of cases of alleged criminality, according to the provisions of the law. As a county has jurisdiction of a crime committed within its bounds, so the main court functioning as to it is a county court. Offenses of a minor character may be dealt with by political subdivisions of counties or by courts having special authorization. Courts as a rule handle both criminal and civil cases, though sometimes there may be separate divisions for each class.

There are in general in the United States several gradations of courts for the prosecution of persons charged with crimes. Each has usually a particular class of cases within its jurisdiction. Beyond the passing on of a given case from a lower to a higher jurisdiction, and beyond the power of hearing appeals

in the case of the highest court, there is for the most part little connection between the several courts.

The lowest form of court is the magistrate's court or court of justice of the peace, or, as is often the case in cities, police courts or municipal courts—sometimes called collectively inferior courts. These courts receive for immediate attention all classes of crimes, retaining those within their own jurisdiction, and passing on the others to courts of higher jurisdiction. They constitute thus a great clearing house for crime. Their actual jurisdiction is limited, extending only to minor offenses, punishable by brief imprisonment or by a small fine. Some such courts are designated as city or municipal courts, operating under State laws, and dealing with both State and city offenses. In a few localities attempt is being made to combine the lower criminal courts with the higher. Sometimes there may be branches or divisions of the lower courts for particular purposes, as traffic courts, courts of domestic relations, etc.

The next highest court is a county court of some kind, which is the court of original jurisdiction as to crimes above minor offenses, or above those disposed of in the lower courts, or as to crimes in general of the more serious character and the more severely punishable. It may be regarded as the formal criminal court, and the one with the widest jurisdiction in the treatment of crime. A county court may also sometimes be resorted to for a preliminary examination. In a number of States the county court hearing criminal cases is known as the court of common pleas. In some States there is created a larger court, possibly moving from county to county within a given district or circuit, for the hearing of criminal cases. Sometimes the criminal court is a part of a regular county court. At times there may be a specialized branch of the county court, as the juvenile court.

The highest court of all is the State court for the hearing of appeals brought to it from lower trial courts, though it may have original jurisdiction as to a few matters. This court is known as the Court of Appeals, Supreme Court, etc.

In some States there is a special appellate court, perhaps a branch of some existing court, inferior to the State court for appeals, and hearing appeals in the first instance, or of a minor or limited character.

For offenses committed by high State officials there may be created a court of impeachment under the direction of the State legislature.

Finally, there is a system of Federal courts to take charge of

cases within Federal jurisdiction, the United States being divided into districts for the purpose, and with the United States Supreme Court the culmination. Cases in general in which some Federal statute or some provision of the Federal Constitution is involved may be taken to Federal courts.¹

¹In connection with the matter of courts in general, it is to be stated that on the possible occasions when the civil law is suspended, it is superseded by martial law.

CHAPTER XVIII

MEASURES FOR BRINGING ACCUSATION AGAINST OFFENDER

MEANS OF INITIATING CRIMINAL ACTION

There are several means by which accusation against a person charged with crime may be initiated, or by which the machinery of criminal law may be set in motion against him, or by which he may be apprised of the legal action to be taken against him.

(1) In case immediate operations against an offender are necessary, with the securing of his person at once, and without giving him opportunity for escape, summary action in the form of arrest without special judicial authorization or warrant may be taken by an officer of the peace, and in certain circumstances by a private citizen as well. As a general thing in practice, when quick action of this nature is called for, report of the possible offense is simply made by a private citizen to an officer—unless the latter is already cognizant of the matter and has already moved. (2) A warrant of arrest may be issued for the accused by a court, particularly a magistrate, at the instance of the accuser, who, if not an officer of the peace, is often designated as the complainant or the complaining witness. This permits the taking into custody of the person of the offender, and is sufficient for the most part for minor offenses. (3) Complaint may be made to the proper public prosecuting official, whose business is then to present the matter to the grand jury, action by this body being often the appropriate procedure with respect to major or the more serious offenses. (4) There may be appearance directly before the grand jury by the accuser with his charges. (5) Procedure may be by what is known as information, or formal accusation on the part of the prosecuting official. (6) In certain cases, particularly in the case of violent death, there may be resort to a coroner's jury to fix responsibility.

ARREST WITHOUT WARRANT

Arrest may be made without warrant by an officer of the law when a crime (especially one that is a felony) is committed in

his presence, or when there are reasonable grounds to believe such a crime has been committed, especially when charges are made by some individual (even in case of error), or by order of court as to offenses in its presence, or in the recapture of a prisoner. A private citizen also has power to make an arrest when a crime has been committed in his presence, though such action by a private citizen is seldom resorted to in actual practice. "Arrest on suspicion" is also possible sometimes—believed to be for the general good.¹ After a person is arrested without a warrant, he is taken before a judicial officer, and a warrant is duly made out.

WARRANT OF ARREST

A warrant of arrest is issued by a proper judicial officer (magistrate or regular court) having jurisdiction in the premises, on complaint of an officer of the law or of a private individual, from personal knowledge or information, under oath, showing probable cause to suspect a certain person of crime. In a few States the prosecuting officer must have some part in the matter. The warrant (which is not as full as an indictment by grand jury) directs an officer of the peace (a policeman in this case acting as an officer of the State) to arrest and bring in the alleged offender. (A warrant may be void for uncertainty or for other reason; if void on its face, the officer attempting to serve it becomes responsible.) The purpose of the warrant is to secure physical control of the person of the offender, and to prevent any possible escape. A summons, which is simply an order of general application, requiring one's presence in court at a given time, without taking one into physical custody, is seldom employed in this connection. (A citation is similar to a summons, but is availed of rather in the lower courts or by the police. Such is also the case with a notice.) A material witness is also liable to arrest for safe keeping.

In effecting an arrest as much force as is necessary is permitted. Private citizens are required to assist if called upon. If necessary, also, a private dwelling may be broken into for the purpose of making an arrest.

Alongside warrants for the arrest of a person, there are warrants on somewhat the same principles for search and seizure,

¹ Arrest is possible also in private actions at law, to recover a fine or penalty, in connection with damage to property, breach of promise to marry, fraud, and certain other torts, or when the offender is liable to leave the jurisdiction concerned.

with reference to private property, as stolen goods, gambling devices, counterfeiting tools, immoral literature, intoxicating liquors, animals alleged to be cruelly treated, etc.

PRELIMINARY EXAMINATION

After arrest, the alleged offender is brought before a proper court (usually a lower court) for the purpose of ascertaining whether there are reasonable grounds for holding him. This proceeding is called the examining trial, or hearing, or preliminary examination. It takes place as soon as possible or convenient after the arrest, with opportunity for necessary attending witnesses. In case of intervening time one may be kept in jail, or let out on bail.¹

If in this proceeding no *prima facie* case is made out, or if there appears no reasonable grounds to suspect the alleged offender of the crime charged, he is at once discharged. But if the contrary is indicated, due action is to be taken. Should the case belong within the jurisdiction of the examining magistrate, or similar judiciary, or should it be reduced to an offense falling therein, it may be heard without delay. Should it belong within the jurisdiction of a higher court, the alleged offender is committed to jail to await trial, or is allowed to be free on the advancing of due bail. For most cases the lower court may decide whether the offender is entitled to bail, and in what amount. In the event that the accused is held for further action, due return is made to the higher court. (The property of the accused is not interfered with, unless it is involved in the crime or is necessary as evidence.) Witnesses at the preliminary examination may also if necessary be bound over for further testimony; if they cannot give bond, they may be placed in jail for safe holding. An accused person may sometimes waive preliminary examination if desired.

In connection with the preliminary examination, or during the preliminary stages in the prosecution of an accused person, or before the actual trial, it is not necessary that he present any of his evidence. Nor is a confession to be wrung from him. He is free, however, to make whatever statement he wishes, and after reasonable questioning. (It is during these early proceedings that the matter of the desirability or propriety of inquisitional methods or of the "third degree" is most likely to arise.) From the

¹ Such examination is not necessary for a fugitive from justice, or for one who has been accused at a coroner's inquest. Nor is it necessary after grand jury action.

very first stage of the proceedings the accused is entitled to the benefit of counsel. (The complaining witnesses and others interested in the proceedings are likewise as a general thing entitled to special counsel.)

INDICTMENT BY GRAND JURY

In the United States most offenses are indictable by grand jury action, those excepted being in the main smaller and less consequential misdoings (misdemeanors being indictable, but in less degree). Indictment by grand jury has held a strong position in American judicial procedure, being in a sense one of the rocks upon which it has been built. Indictment, calling in as it does the opinion of a cross section of the community, apart from action through the regular channels of the law, is of impressive force in bringing accusation of crime upon an offender.¹

The grand jury, as for long constituted, is a county body, of due qualifications (important ones often being intelligence, good moral character, and holding of no office), summoned and sworn, and charged by the court with the duty of inquiring into all offenses against the law (besides inquiring into the conduct of certain public institutions and possible misbehavior of public officials). In a measure it is a constituent part or branch of the court. It has generally been composed of from twelve to twenty-three members, though in a few States, under the tendency to restrict or simplify the functions of the grand jury, the number has been reduced to five, seven, or eight. Action is possible by a majority vote.

The grand jury may make whatever investigations it wishes, and upon its own authority, proceeding upon its own observations, or upon the observations of persons appearing or called before it. In general, however, it hears only the charges presented by the public prosecuting attorney. It may call witnesses, but hears evidence only for the prosecution. (If desired, evidence for the accused may be given.) The prosecuting official acts at its orders. All its proceedings are secret. Its movements must be

¹The grand jury is a venerable institution in the English law, having been introduced thereinto long before the settlement of the American colonies. It was designed as a restraint upon arbitrary or willful prosecutions, or as a check upon putting men upon trial wantonly or capriciously. Under it charges had to be formally laid, which could be thrown out if without legal basis or substantiation or if brought maliciously or with bad motives. In America the grand jury system has been held in hardly less regard than in England.

of proper character; else objection may later be raised by the accused.

If the grand jury is satisfied of the substantial basis of the charges brought, it renders a true bill, or indictment (or possibly presentment, when it acts largely of itself to prefer indictment). If it declines to press the charges and takes no action, it renders no bill. Refusal to indict is not a bar to subsequent indictment.

The indictment of the grand jury is a formal, carefully drawn instrument. It is in the nature of an announcement of action or prosecution in the name of the State against a certain party or parties.¹ All necessary facts and circumstances must be set down with the utmost definiteness and certainty, and without ambiguity or inconsistency, technical language being used where called for. If the name of the alleged offender is unknown, a fictitious name may be substituted. There must be a more or less definite allegation as to the time and the place of the crime charged. If a crime is against a particular statute, or if a specific intent is required, it must be so stated. If property is involved, it is to be duly described and the ownership shown. There may be a joinder of parties or of counts, or separate charges.

The allegations of the indictment are set down with such particularity for the benefit of the accused, so as to inform him fully of the charges which he has to meet, and to enable him properly to defend himself when he comes to trial, and especially to guard him against a second prosecution in the same matter. It is a prime requirement of the law that all material allegations of the indictment be proved on the trial, and that there be no variance between proof and allegations. If seriously defective, an indictment may be quashed.

There are now generally statutory forms of indictment. The tendency is to shorten and simplify them. Amendment of indictments is also being permitted in increasing degree.

Some of the ancient force of the grand jury indictment has been lost of later years. Not only are verbosity and complexity giving way to more modern expression; but the institution itself is, because of its cumbersomeness, being more and more sparingly used, some other method of accusation being substituted. Already half of the American States, if not having abolished the grand jury, have shorn it of much of its old powers, perhaps allowing it only for certain serious cases or at the order of the court.

After indictment, a bench warrant (or a writ of *capias* or

¹ Accusation against the accused may be in the name of the State, the Commonwealth, or the people.

venire facias) is issued for the accused. If the accused is still at large, he may also be taken by warrant of arrest.

ACTION BY INFORMATION

Prosecution by information, formerly resorted to rather as to lesser offenses or as to offenses directed against government, is a very simple process, the charges against the accused merely being filed in due order with the court having jurisdiction, which task is performed by the proper prosecuting officer (usually the local officer, but possibly the Attorney General of the State). In connection with this method a warrant of arrest may be availed of to secure the person of the accused; or action may follow immediately after the preliminary examination. Action by information is thus virtually a substitute for grand jury action, or supersedes it. Should an offense be found other than that originally charged, due changes may be made in the accusation.

Action by information has in the past had but little use in the United States. But by reason of the absence of complexity or formality in it, it is receiving greater attention, and probably in time will have a stronger foothold in American law. About one-half of the States now permit process by information in the case of felonies, as well as in the case of misdemeanors.

ACTION BY CORONER'S JURY

Another judiciary of long standing, authorized in American law to listen to charges of crime and to take action in the way of accusation, is the coroner's jury. This may function in the case of homicides, or in the case of violent deaths or deaths by accident, investigating the manner and cause of such deaths, and holding suspected persons for appropriate action. The coroner is empowered to summon a special jury, and may call such witnesses as may be necessary, with use of both medical and lay evidence, and perhaps with assistance of the regular prosecuting officer. Such arrests as are required may be effected. The verdict of the coroner's jury has to some extent been a substitute for other accusatory action, but a "return" must be duly made to a higher court.

In certain States the office of coroner has been abolished, its functions being taken over by the department of health or by the prosecuting office through some medically trained official. Massachusetts in 1870 was the first State to take such action.

POSSIBLE RELEASE OF ACCUSED ON BAIL

At any time before a given case is disposed of, or during the period when one is legally charged with an offense (especially in connection with the preliminary hearing, grand jury proceedings, arraignment, actual trial, and possibly appeal), the accused is subject to temporary and conditional release from confinement on bail (or recognizance) or by cash deposit, to insure his appearance in court at a specified time. This involves the acknowledgment of his indebtedness to the court in a fixed amount, such amount to be forfeited in case of his failure to appear at the time set. A bond can be offered only when there is sufficient property to cover it, whether that of the accused or of some other person.

Practically all offenses are bailable, except crimes punishable by capital punishment when a *prima facie* case is made out against the accused. Bail is usually a matter of right as to misdemeanors; but at the discretion of the court as to felonies. Authority to allow bail for felony cases is usually in the hands of higher magistrates. The amount of bail must not be too great ("excessive bail may not be required", in the words of the Federal Constitution); nor, on the other hand, must it be insufficient, considering the gravity of the offense. The amount may be increased or decreased at any stage of the proceedings, as may be found desirable.

POSSIBLE RELEASE OF ACCUSED THROUGH HABEAS CORPUS PROCEEDINGS

At any stage, also, before final disposition of a case, the accused person may be released on writ of habeas corpus. This is a very important and sacred institution in English and American law, largely so because of the often well-founded fear of unjust or protracted incarceration without due legal trial. In the Constitutions of some of the American States the suspension of the writ is expressly forbidden.

The purpose of the writ of habeas corpus, which is a very simple process, is to determine quickly and expeditiously whether an accused person is being held without authority. It aims specifically to inquire into the legality of the commitment; it may relate to want of proper extradition, denial of bail or imposition of excessive bail, lack of jurisdiction of court, defective process, mistake as to identity of person held, improbable commitment of

crime charged, prior judicial action on same facts, etc. In a sense it is a review of the entire proceedings.¹

The writ is issued upon petition of any person to any magistrate or court, showing probable cause that the accused is being wrongfully detained in jail or prison. It is issued to the person having charge of the prisoner, directing him to produce the prisoner before a qualified court and show cause for the detention, the writ being returnable to the court issuing it or to some other court. Failure to obey the writ may even render one personally liable to the prisoner. Witnesses may be duly present at the hearing upon the writ.

ARRAIGNMENT OF ACCUSED

Arraignment is the formal accusation or presentation of the charges of the state to the accused, together with his response thereto. The proceeding is one in which the person charged with crime is "held to answer." The accused appears before the bar of the court, the charges are read to him, and he is asked how he pleads—whether guilty or not guilty. If he refuses to answer, or stands "mute," the effect to-day is practically the same as if he answered not guilty, and such plea is entered for him (even though silence may elsewhere be regarded as a confession of guilt). This attitude is due to the anxiety of the law to give every man a fair consideration, and to have his guilt or innocence determined upon trial. At times, for the same reasons, a plea of guilty may be actually rejected.

If the plea of guilty is accepted, the necessity for a trial is obviated and the case is ended with the pronouncement of sentence (or method and extent of punishment) by the court. *Nolo contendere*, employed rather for minor offenses, has virtually the same effect as a plea of guilty. A plea of guilty may have the effect of lessening the sentence to be imposed. It may also result in the reduction of the charge brought against the accused. In connection with the plea of guilty (either at this stage or later) there may be several lines of action possible: plea of guilty of offense charged; plea of guilty of a different offense, generally a lesser one; change of plea of not guilty to plea of guilty of offense charged; and change of plea of not guilty to plea of guilty of a different offense. The accused is permitted to withdraw his plea of not guilty at any time before the verdict.

¹ Habeas corpus proceedings may be employed for non-criminal cases as well, as with the insane.

At arraignment or at a later stage of the proceedings a motion may be made by the accused to have the indictment set aside or quashed. Arraignment may sometimes be waived by the accused.

ANTECEDENT PLEAS OF ACCUSED

Apart from the general issue of a given case, or the actual question whether or not the accused is guilty of the offense charged against him—which constitutes the real “trial”—there are several antecedent pleas possible to be offered by the accused which, if accepted, cause an arrest of immediate prosecution or a discontinuance of all prosecution.

Pleas in bar call attention to a former conviction or acquittal on the same charges or to a certain legal status of the accused—pleas sufficient to bring to a halt any further action. The protection afforded by the claim of prior adjudication of a given case has its origin in long-established conceptions, which find a place in the provisions of the Constitutions of many States as well as of the Federal Constitution, to the effect that no person may be in double jeopardy, or twice in jeopardy, as to life or limb, or as to general security, for the same matter.¹

A bar of similar effect may be a pardon from the Governor of the State. Of like result may be proof of insanity. Another effectual obstacle to further proceedings may be the invocation of the statute of limitations (and also perhaps lack of jurisdiction as to person or as to offense).

Pleas in abatement, which are rather of a dilatory nature, and do not go to the heart of the issue, have for their basis a formal defect or error in the indictment, lack of jurisdiction of court, or a like matter. An indictment may be set aside for a number of reasons—that it was not properly drawn; that the grand jury was not properly chosen or qualified; that the crime is not clearly set forth; that the act in question is not stated to be forbidden by law; that the law is not clear as to the act to be punished;

¹This principle of the law is supposed to be in the general interests of society, and for the prevention of the harassment of individuals. Jeopardy in the present connection is supposed to begin when the jury is sworn, one having already been on trial in a previous proceeding. Statutes and court rulings are different as to the identity of the offense concerned, as to the competency of jurisdiction, and as to other matters; they are also different as to the extent to which the original trial should have gone—though in general the jury must have been regularly empanelled. The rule may apply even when there has been simply harmless error or omission in the proceedings.

that the accused is wrongly named; that names of witnesses are not duly signed; that there is omission of material averments; that there is a repugnancy between allegations; that there is a misjoinder of parties; that there is an infraction of the statute of limitations; etc. (Inspection of the minutes of the grand jury may also be a privilege of the accused—to be granted if good reasons are adduced.)

In addition, it is possible for a demurrer to be raised by the accused—that is, a question for the court whether the charges presented, even if true, are sufficient to constitute an offense at law. If they are not, there can be no trial, for no real offense has been committed. A demurrer may be almost equivalent to a motion to quash the indictment, especially on the ground of its defectiveness. It may also be on the order of pleas in abatement in general. Often demurrers relate particularly to the evidence to be presented against the accused. Demurrers in this connection are now rather giving way to quashing.

SUMMARY PROCEEDINGS FOR CERTAIN MINOR OFFENSES

For certain relatively minor offenses disposed of in the lower courts, especially such offenses as disorderly conduct, vagrancy, drunkenness, gambling, assault, petty thefts, violation of traffic regulations, violation of local ordinances, etc., or offenses punishable by imprisonment, for the most part in a local institution, generally for less than one month, or by fine, generally of less than \$100, proceedings are of a summary character. Prior formal accusation is dispensed with. Cases are handled in a simple, direct manner, often without a jury, or possibly with only a small one. In certain States appeal is possible from these proceedings. In general these are the offenses denominated misdemeanors.

MEANS OF PREVENTING CERTAIN MINOR OFFENSES

In connection with the possible commission of certain lighter offenses, as breach of the peace, disorderly conduct, general misbehavior, or some similar offense, whether against the person or against property, there is sometimes provided a special means for their prevention. When evidence appears of the early likelihood of their commission on the part of some person, especially in case prosecution for wrongful actions might eventually be expected, there may be presented to the court (often a magistrate) a petition or complaint, showing reasonable or probable grounds

to believe that the offense in question is threatened, or is about to occur. Thereupon bond may be required of the person named to keep the peace, or for his good behavior, which bond is to be forfeited by any improper conduct.

MEANS OF CURBING CERTAIN CONTINUING OFFENSES

Certain offenses against public policy or public welfare, especially those of a continuing character, may have a special form of treatment applied to them—involving not so much punishment for their commission, as means for their speedy ending. These are known as public or common nuisances, which may be summarily reduced or abated by public officials or at the instance of any citizen concerned—by a citizen directly if no breach of the peace or public disturbance is likely to follow. Such nuisances are said to affect the people at large, and to be prejudicial to a portion of them in health, convenience, safety, property, or sense of decency or morals—or to interfere with the comfortable enjoyment of one's home. Examples of nuisances are obstructing highways, allowing dangerous holes to remain uncovered in a public way, allowing noxious odors to be spread, maintaining a gambling house, disorderly house, or resort of vagrants, promoting fighting between men or animals, etc.

OFFICE OF PROSECUTING OFFICIAL

Proceedings against an accused person, when once accusation has begun, or when once there are established reasonable grounds to believe that a crime has been committed, devolve upon the duly qualified public prosecuting attorney of the jurisdiction concerned.¹ (A special prosecuting officer may sometimes be appointed if deemed best. Sometimes also attorneys from outside or from the State Attorney General's office may be called in to render aid.) It is the prosecuting officer who is to set in motion the machinery of prosecution, and to continue it till the case involved is determined. It is his particular function to represent the state or the public, and to safeguard its interests, at all stages of the proceedings. He is to be prepared to take whatever appropriate action the circumstances may de-

¹Occasionally a private agency is authorized to initiate action, and to assist in the prosecution of an offender, especially when vice or the ill treatment of a child is involved.

mand. It is also his task to secure what evidence he can for his cases.

The public prosecuting officer may be permitted for different reasons, as may seem best to him, to decline or to drop particular cases, or to refuse to press certain charges, or to enter a *nolle prosequi* ("nol-pros") as to some or all particulars in a given offense at any time during the proceedings and before the rendering of judgment. Some of the circumstances when this may be done are: when the indictment is found to be fatally defective; when the case is improperly brought; when witnesses for the state prove difficult to obtain; when a case based upon practically the same evidence has resulted in acquittal; or when there appears to be lack of sufficient evidence to convict. Often the prosecuting officer may exercise considerable discretion in the matter. Sometimes dismissal or "nol-pros" is possible only with the consent of the court; sometimes not.¹

¹The prosecuting officer is called district attorney, State (State's) attorney, Commonwealth (Commonwealth's) attorney, county attorney, or by some similar term.

CHAPTER XIX

PRELIMINARY MEASURES TO TRIAL OF ACCUSED

TIME OF TRIAL

The accused, or the defendant, is entitled to a speedy trial (though constitutionally the state or the prosecution has no such right). Proceedings, however, may be postponed or continued for a number of reasons—local prejudices, absence of witnesses, sickness on part of defendant, counsel or witnesses, etc.

PLACE OF TRIAL

An accused person is to be tried in the county where the alleged crime was committed (its locus). The trial may, however, be removed to another county, or a change of venue obtained, when a fair and impartial trial is not likely in the first county. A change may be directed when the people of the county are believed to be generally prejudiced as to the merits of the case, when an opinion has generally been formed, when the prosecuting attorney is believed to be under undue influences, when the judge is interested, prejudiced, or related to the accused, or has been a former counsel for him, etc. (In certain circumstances a judge may also be removed in favor of another.)

The prosecution does not usually have a reciprocal right as to change of venue, though in certain States it may have a "foreign" jury, or a jury brought in from another county.

JOINT TRIALS

When two or more persons are involved in the same crime, they may in some jurisdictions be jointly or separately indicted and tried, at the discretion of the court or according as the interests of justice may determine. When two or more crimes are charged against the same person, he may be tried for any or all of them.

OFFICE OF JURY IN CONNECTION WITH TRIAL

One of the basic principles of Anglo-Saxon law is that an accused person is to be tried by a jury of his peers. This institution has been an outstanding factor in the jurisprudence of England for centuries.¹ Guarantee of protection by trial by jury is generally found in the Constitutions of many States of the Union as well as in the Federal Constitution.

Trial by jury is not merely a process to determine one's guilt or innocence; it is the great right of the accused, his privilege. To an extent it is of the essence that one may have a fair trial, which includes information as to the nature of charges to be preferred, confrontation of witnesses, right to counsel, and immunity from being deprived of life, property, or civil rights without due process of law. The jury and the law of evidence have been declared to be the safeguard of the prisoner. In a sense, the purpose of the trial is to see that no criminal escapes, and that no innocent man suffers. In a still larger sense, there are balanced in a trial the rights of the individual against those of society.

The traditional number of members of a jury has been twelve. In some States there is a tendency to reduce the number somewhat, especially when cases involved are not of grave character or are not punishable by capital punishment. (In certain States an alternate juror is provided for.)

In some States by statutory enactment the defendant is permitted to waive his right to trial by jury, especially under certain circumstances. In certain of the States the defendant may elect trial by the judge of the court instead of by jury for some offenses, in a few for the more serious ones.

SECURING OF JURY

The sheriff is empowered to bring in lists or panels of suitable citizens from which the jury is to be selected. Sometimes particular groups to be called in for service may be chosen by lot. (A select or "struck" jury or one of special qualifications is sometimes reserved for certain occasions.)

Getting a jury is often a far from easy matter, seemingly becoming less easy with time. The difficulties are mainly two—

¹At first jury trial was largely to allow witnesses to give opinions; later the functions of witnesses and of jurors were separated.

possibility of exemption from jury service, and challenges to service of possible jurors.

There are in most States certain legal exemptions to jury service, depending chiefly upon one's occupation, as those of physicians, lawyers, clergymen, teachers, public officials, operators of transportation service, etc. Often many in exempted classes are the best qualified elements in the community for service. In the majority of States there are few qualifications as to education, beyond the possession of "ordinary intelligence" or the ability to read and write, or as to the ownership of property.

The second difficulty lies in the power of challenge of prospective jurors, a power vested in both sides. A challenge may be to the array (or to the panel) or to the polls (or to each individual). The former has reference rather to the general method of their selection, perhaps on the ground of bias or favoritism. Challenges may also be peremptory or for a specific cause. Peremptory challenges are challenges without any reasons given therefor. The number of peremptory challenges permitted to the defense varies in different States, as from four to ten, or from three to thirty, much sometimes depending on the seriousness of a particular offense. The state usually has fewer such challenges, perhaps half as many.

There are various grounds for challenges for cause—irregularity in selection of panel, lack of proper qualifications, general unfitness, personal bias, kinship or other relation to accused, prior connection with case (as grand jury service), previous expression of opinion as to merits of case, views as to capital punishment, etc.

CHAPTER XX

PROCEEDINGS AT TRIAL

GENERAL CONDUCT OF TRIAL

After the jury is selected, the case is ready for trial.¹ The trial is to be open to the public. It is the constitutional right of the accused to have a public trial; but the court, in the interests of order and public well-being, may exclude such persons as it may see fit.

At the trial proceedings there are four necessary parties present: the defendant, the prosecuting officer, the jury, and the judge. The defendant is present in general for felonies, and always when evidence is being introduced (so as to be able to confront witnesses against him). He is as a usual thing represented by counsel—being, as already noted, entitled to counsel at most stages of the proceedings against him. At the time of trial, if he is not able to employ counsel for himself, the court in most instances may appoint counsel for him. Such counsel he must accept, or go without. In a few jurisdictions provision is made for a special public defender to look after the interests of the accused.² (Assistance of private counsel may be permitted for the prosecuting official.)

The defendant and the jury are alike in the custody of the sheriff. The jury is kept *incomunicado* with the outside world, and must have no influences of any kind exerted upon it. Should a juror become disqualified for service, another juror is substituted, or a new jury is selected.

It is the business of the judge to officiate and direct the proceedings generally, at the conclusion of the submission of evidence instructing the jury as to the legal principles upon which

¹There may be writs of mandamus from a higher to a lower court, requiring certain action, or writs of prohibition forbidding certain action, in connection with the handling of a case.

²The public defender may act from the beginning. In a few States the office of public defender is created by law. In certain communities the services of a public defender are provided by a private organization, possibly in connection with a legal aid society, a local bar association, etc.

the case is to be decided and indicating the relation of the law to the facts found. Questions of law are to be determined by the judge; questions of fact, by the jury. Any serious misconduct during the trial on the part of judge, prosecuting officer, or jury may warrant the setting aside of a conviction.

Witnesses appear under subpoena. For witnesses for the defendant not able to be present, depositions may be permitted, or a commission may be appointed to take evidence. (In the majority of States there is permitted the deposition of witnesses at a previous trial when not able to be present.) One is a competent witness if he understands the nature and obligations of an oath, whatever his religious belief.

Proceedings at the trial are opened by the prosecuting officer, who states or outlines his case and presents his evidence, or what he intends to prove, and calls his witnesses. The defendant, or rather his counsel, follows in like manner. After all the evidence is in, and after due speeches by the attorneys, the case is ready for the jury.

RULES OF EVIDENCE

Of great importance in the trial are the rules as to the evidence to be introduced in determining the guilt or innocence of the accused—its nature, manner of presentation, credibility, competency. Without rules of evidence the trial would be unduly prolonged, with the submission of much irrelevant and unnecessary matter. In addition, rules are essential to facilitate desirable and proper evidence—to promote clear and precise exposition, and to overcome passion, bias, prejudice, etc. They are, lastly, called for because questions of fact are left to inexperienced laymen who compose the jury, and these facts must be set forth in their proper legal relations.

The rules of evidence which have been established are of wide scope, and often of intricate nature. They had been formulated in England during Colonial times, the judges of that country having gradually introduced them into common law procedure. With the course of time they have been elaborated and made more and more binding. In general, the rules of evidence have stood the tests of the law, though they have as yet had but little of modern scientific examination applied to them.

Evidence may be defined as the statements of witnesses, or documents or material objects, offered in court as to matters undergoing inquiry. It embraces all surrounding facts and circumstances with respect to the commission of a crime, including

motives, preparation, subsequent conduct or condition, accompanying statements, etc. Proof is the means to obtain evidence; evidence is the result of what is obtained. Corroborative evidence is evidence tending to the same conclusions as preceding evidence.

Evidence must be material and relevant to the points at issue. The judge decides as to the admissibility of evidence; the jury, as to its weight.

The giving of testimony must follow certain particular lines. It is not spontaneous, or in recital form, but merely in answer to questions, propounded by counsel. The purpose of this is to keep witnesses' statements within bounds, and to allow timely objections of counsel in case improper testimony is about to be introduced.

Evidence is presented in several stages. First is direct examination by the attorney on whose side is the witness, during which all material points are to be brought out so far as the witness is concerned. The next stage is cross-examination by the opposing counsel, for the purpose of bringing out any new facts, or of shaking previous testimony of the witness—by involving him in inconsistencies, testing his veracity, inquiring as to his character, possible bias, etc. There is then opportunity for reexamination by the first counsel, and possibly for re-cross-examination by the second.

Leading questions by counsel are usually not allowed (especially in examination by the witness' own counsel). Such questions are supposed to lead on a dishonest witness, or to assist too much an apathetic or sluggish witness, by indicating how his answer is to be made. (Leading questions are opposed in less degree with a witness who proves hostile, for purposes of identification or of contradiction of a previous witness or of previous testimony.)

Certain fundamental rules in the law of evidence are that evidence must correspond with allegations in the indictment; that only the substance of a charge need be proved; that the burden of proof is upon the affirmant—which in a criminal trial means upon the state throughout. (The accused is presumed innocent till the contrary is proved.)

Evidence may be direct or circumstantial. Direct evidence relates to primary facts under one's personal observation or from one's personal knowledge. Circumstantial evidence to a large extent consists of inferences from observed facts or established testimony. It may indicate the particular status of the

accused—disposition, incentives, threats, attempts, arrangements, silence, etc. Such evidence is sometimes of great value, and it is often the only evidence possible; but it is always to be employed with great care.

In evidence there are what are known as absolute presumptions and rebuttable presumptions (or presumptions which may be overcome by special proof), such presumptions being aids to reasoning, and being grounded upon general principles. Certain legal presumptions are: a crime is presumed not to have been committed till clearly proved (proof must be beyond a reasonable doubt);¹ property is supposed to be in lawful hands, but stolen goods are supposed to be in the hands of the thief; possession of stolen goods is supposed to indicate guilt; one intends the natural and probable consequences of his acts; etc.

There are also certain matters of which courts take judicial notice, no evidence being required for their substantiation, as statutory enactments; general business customs; facts as to courts, governments, public officers, foreign countries, geography, history, ordinary natural circumstances, etc.

An important rule in evidence is that the witness give evidence as to observed facts and not as to opinions or conclusions. The one exception here is the testimony of experts on some scientific subject, or of persons who have had special experience along some particular line, or of students in some special field. Their opinion may often throw much light upon some question before the court. Sometimes there are experts on both sides, with possibly conflicting opinions.

Another important rule of evidence is that no hearsay evidence may be introduced. The reason for the refusal to accept such evidence is that the party making the original statement is not under oath, and that he is not subject to cross-examination.

There are in general two exceptions to this rule—a previous confession and a dying declaration. A previous confession, to be admitted as evidence, must have been voluntary, and not the consequence of a threat or a promise, made to one in authority (officer, judge, etc.). Such evidence is admissible though the person making the confession is under arrest, and though it is made under promise of secrecy, or is induced by deception (but not when in a state of intoxication or in sleep).

A dying declaration, to be received as evidence, must have been made by one after all hope of recovery is gone, and when

¹If it is known that one of two persons singly committed a crime, but it is not known which one, both must be acquitted.

death has in fact subsequently occurred (it being presumed that the deceased was capable of giving lawful evidence).

As a rule any person who is called to the witness stand is required to give such evidence as he possesses. There are two exceptions to this rule. One has reference to what is known as privileged testimony—the relations between the accused and the possible witness being so close and peculiar and of such confidential nature that the law wishes to do nothing to undermine them. Such privileged testimony exists as between attorney and client, between physician and patient, between minister or priest and parishioner, sometimes between husband and wife as to certain matters (the chief exception being as to personal injury inflicted by one spouse upon the other), and sometimes between a government or judicial officer and another person in connection with affairs of government.

The other exception is that one need not testify when his testimony may tend to incriminate himself. This is a guarantee of the United States Constitution and of the Constitutions of most States. It comes from an old English rule arising from the fear that testimony against one's self might lead to torture to secure a confession. The rule has special reference to testimony by the accused. Once he was forbidden altogether to testify; later he was allowed to do so, but he could not be compelled. Furthermore, it is provided in the laws of most States (though a decreasing number) that no inference may be drawn if the accused declines to testify. If the accused once submits to examination as a witness, he waives all constitutional protection and may be compelled to answer all pertinent questions.

A person who has been engaged jointly in some criminal act with other persons is sometimes permitted to testify against his fellows, or to turn state's evidence—for which service the state may show its appreciation by releasing him from prosecution. The evidence of an accomplice, however, is to be taken with caution; in general it requires corroboration.

Evidence as to character (or rather reputation) is usually permitted on behalf of the defendant, after which it is open to attack by the prosecution. A witness may be impeached as to general character, or as to previous contradictory evidence in the present or in a past case. His character may be challenged either as to general moral standing or as to veracity. Evidence as to his character is always relevant—as to notorious mendacity, bias, previous inconsistency, etc. A person who has been convicted of a crime may qualify as a witness, but his credibility

may be affected by such fact. Evidence of good character is generally permissible.

PROCEDURE AFTER GIVING OF EVIDENCE

After the presentation of the evidence before the jury, attorneys for both sides may be entitled to address it, giving a summation of the evidence, and attempting to prove their case from it. If the evidence is overwhelmingly one way or the other, the court may direct a verdict. A motion for a directed verdict may be duly made by counsel, as may also a motion for discharge of the defendant. Dismissal of the case, or its taking away from the jury, may generally be asked for before the verdict, on the ground of weakness or insufficiency of evidence.

If the case is to go to the jury, the court gives it instructions, especially as to how the law is to apply to ascertained facts. Counsel may ask for certain instructions.

VERDICT

The deliberations of the jury are in secret. In the arrival at a verdict on the part of the jury, it has been the policy of the law to insist upon two considerations. One is that the jury, if it renders a verdict of guilty, must be satisfied beyond a reasonable doubt of the guilt of the accused. (In civil cases preponderance of evidence is sufficient.) The other is that the verdict be reached by unanimous vote. For less serious offenses there is a tendency to permit a verdict less than unanimous, such being the case at present in almost half the States. Should the jury fail to agree upon a verdict, a new trial is necessary.

The verdict is usually a general one—whether the accused is guilty as charged. In a special verdict the facts as found may be presented, with final determination left to the court. The verdict may be rendered as to the full offense charged, as to a lesser offense (possibly included in the full offense), or as to an attempt at the specified offense. (A partial verdict relates to a part of the charge.) If there are different counts or different offenses involved, and all are proven, there may be a cumulative sentence in consequence. With its verdict, the jury may make a plea for mercy, or for a reduction of sentence.

After the rendering of the verdict, or at the time of judgment or sentence, several motions are in order on the part of the defendant, and for his benefit, if the verdict is adverse to him:

to set aside the verdict as contrary to the evidence; in arrest of judgment for fatal error in the record or for a like good reason; or for a new trial on the ground of insufficiency of evidence, introduction of improper evidence, newly discovered evidence, failure to protect rights of defendant, misconduct of jury, error or irregularity in proceedings, erroneous instructions to jury, etc. (Like motions are generally not within the power of the prosecution or the state if the verdict is adverse to it.) A motion may also be made sometimes in mitigation of offense.

JUDGMENT

After the submission of the verdict, the one remaining procedure is the rendering or pronouncement of judgment by the court. If the accused is found not guilty, he is definitely discharged from the hold of the law. His acquittal serves as a bar to subsequent conviction for the same offense or for an inferior degree of it. If the accused is found guilty, he receives due sentence.¹

POSSIBLE APPEAL TO HIGHER COURT

After the trial is completed, however, and the jury has rendered its verdict, the case need not necessarily be ended. There remains the right of appeal by the accused to a higher court, where it may be examined or reviewed. Appeal usually acts as a stay of proceedings, the accused perhaps being released on bond while his appeal is pending, though possibly he may begin serving his sentence in the meantime. Appeal is permitted rather for cases of higher import, or for offenses of a relatively serious order. (Sometimes, also, by writ of certiorari a case, before being decided by the trial court, may be submitted to a higher court for its opinion as to certain matters of law.)

The appellate court upon review may uphold or affirm the decision of the trial court, may remand the case to it for a new trial (perhaps under certain instructions), or may reverse the decision rendered at the trial.

A case is carried to a higher court on appeal by writ of error, or by means of a bill of exceptions (or objections) taken to the rulings of the trial court, especially in overruling motions or requests of counsel, or as to the character of the evidence ad-

¹Before the passing of sentence the defendant may be asked whether there are any reasons why this should not be done.

mitted. Objection may be offered on the ground that the judgment in a given case is contrary to the weight of the evidence, or is against the law or justice; that new evidence has been discovered; that certain improper evidence was introduced in the trial; that certain proper evidence was denied; that the evidence failed to show some important detail; that the indictment was incorrect or defective in some particular; that there was misdirection or faulty charges to the jury on the part of the court; that the jury was improperly drawn; that there was some misconduct or impropriety on part of judge or jury at the trial; or some similar ground. An appeal may be taken from final judgment of conviction; from an order denying a motion for a new trial; from an order made after judgment affecting substantial rights; or for some like reason. (It may also be possible sometimes for the defendant to secure a certificate of reasonable doubt from the trial court or other court, to halt immediate carrying out of sentence.)

The law in the matter of appeal is far more favorable to the defendant than to the state—another instance of the solicitude of the law for the defendant. The strictest rule is that error at the trial, however slight, if prejudicial to the defendant, must lead to remanding or reversal unless it is affirmatively shown that the defendant is not injured thereby. If a trial court ruling is adverse to the defendant, it is subject to review—but not in the majority of States if the ruling is adverse to the state. In the latter event the state has usually no recourse to prove its case.

Though the state is with much more limited right of appeal than the defendant, there is a slowly developing tendency to extend the rights of the state in this regard. When the state has right of appeal, it is generally from an order discharging the accused before trial, or from a judgment quashing the indictment, or from a judgment sustaining a demurrer, or from an order in arrest of judgment of conviction, or from an order that the jury find for the defendant; or for some like reason.

CHAPTER XXI

PROCEDURE IN JUVENILE COURT

ORIGIN OF JUVENILE COURT

The juvenile court is but a natural development in the course of protective legislation for the child. In the old courts of equity the absolute control of a child by its parents gave way in time to the protection afforded the child as a ward of chancery, such a court becoming a sort of *parens patriae*. This consideration of the court for the child, however, was for long extended mainly when property rights were involved, or when the child was suffering special abuse. In general, there has been slow recognition in the law of the full obligations of society to the child.

Within comparatively recent years there have developed conceptions of the rights of the child as such, which conceptions may now be said to be in a state of expansion. The child is receiving an attention and a regard never before accorded it. Special organizations have been created to advocate and enunciate the ever enlarging rights of the child. This new attitude extends to every phase of its life, including any possible infraction of the laws as to crimes. Under these conceptions a new light is found to be thrown upon the entire question of juvenile delinquency.

Though in the eyes of the law the child was an "infant" and had to have all his legal dealings carried on through some sort of "guardian," yet in the past generally the child was held responsible for his crimes equally with adults. His punishment was for long little mitigated because of his age. In later times, however, this factor came to modify legal conceptions as to the answerability of the child for his misdeeds. There was now introduced a differentiation for him in the determining of his offending and in his treatment with respect thereto. This differentiation has also been set forward with the idea of the individualization of punishment in general.

The realization of the necessity of a different treatment for juvenile offenders was first manifested in the creation of special institutions for them, apart from adult offenders, in which

education at the same time was to have a recognized part. The final stage in the new conceptions came when different legal proceedings were instituted for juvenile offenders, and a special court was set up, this court coming to be known as the juvenile court.

PRINCIPLES OF JUVENILE COURT

The underlying principle in the present treatment of delinquent children and youth is that there are not the same presumptions with them that exist in the case of crime on the part of adults. With the latter, willfulness, coupled with the fact of attainment of years of discretion, is the heart of the matter. With the former the root of the trouble lies rather in thoughtlessness, exuberance of youth, or lack of moral training. The same intentional or reasoned disregard or flouting of the law, the same moral obloquy, does not attach to the one as to the other. Juvenile offenders have not reached the years or wisdom or the degree of responsibility of adult. The younger group, moreover, are not regarded as constituting the grave danger to society that the elder do. Children and youth for their misdeeds need, not so much punishment, but rather education and reformative treatment.

In addition, it has come to be recognized that some children are growing up in harmful or seriously defective homes or neighborhoods, and that with others there are fundamental difficulties of personality, all perhaps leading to trouble, and requiring timely attention and treatment.

The chief offenses of boys who transgress the law are found to be stealing of some kind, incorrigibility, and disorderly conduct. The chief offense of girls is some violation of the moral code as to sex, besides incorrigibility. Among misdeeds of boys there are various forms of harm to property, including such practices as injury to passing vehicles, breaking glass, setting up dangerous bonfires, sundry depredations upon property, wanton damage to property, vandalism, etc. Often their misdoings are largely the result of carelessness or thoughtlessness or of love of mischief. Not a little of their offending comes from attempts to play or to get money for play or amusement; some comes from an attempt to avenge a real or fancied wrong, from imitation of or at the suggestion of elders, or from a response to wrongful influences of one kind or another. In large part, juvenile delinquency occurs when character is in course of formation and when conscience is still a developing process. Often it results

from highly complex and interacting influences, perhaps starting in earliest years.

In childhood and youth, or during the juvenile period of life, there are in operation factors that greatly reduce or minimize responsibility for wrongdoing. Under eight years the child is hardly to be held capable of properly distinguishing as to acts considered by the law as crimes. From eight to perhaps thirteen character traits are appearing; but the child is still lacking in prudence or foresight, or in full realization of the consequences of his conduct. From thirteen to sixteen or seventeen or eighteen there is being effected the practical formation of character; but at this period the emotions are at high tide, surging at the leash of self-control, and the impulsive throb of youth has not sobered down. By eighteen or thereabouts, however, one is felt to have reached a stage of balance in life, when the excuse of juvenility can no longer serve. It is difficult to say with exactness just when one passes from the lightness and impetuosity of youth to the stouter years of manhood; but on the average it is believed to be somewhere near the time indicated. Below this date is the "juvenile court" age.

In theory at least, the juvenile court occupies an incomparable strategic position in dealing with and in the treatment of the offender by the law. In it lie possibilities beyond computation for reaching in time the potential criminal, or the youthful delinquent, and saving him from a criminal career, or preventing him from becoming an actual criminal.

DEFINITION OF JUVENILE DELINQUENCY

The definition of juvenile delinquency has now become of rather wide compass. It embraces much more than the actual violation of a law; it includes conditions and tendencies that might lead to or end in crime. What the laws now cover can best be indicated by an enumeration of the things constituting juvenile delinquency, as found in the present statutes of a number of States: violation of a law; incorrigibility; association with thieves, criminals, prostitutes, vagrants, or vicious persons; growing up in idleness or crime; knowingly visiting a saloon, poolroom, billiard room, gambling place, etc.; knowingly visiting a house of ill fame; wandering about the streets at night; habitual wandering about railroad yards; jumping on or entering moving engines or trains without permission; habitually using profane, vile, indecent, or obscene language; absenting one's

self from home without just cause or without consent of parent or guardian; immoral, indecent, or disorderly conduct; habitual truancy; frequenting certain public places; etc. Sometimes a different definition is employed—violation of laws or ordinances; waywardness, habitual disobedience, or lack of control by parent, guardian, or custodian; absence of settled home or proper guardianship, habitual truancy, evil habits, evil associations, loafing, begging or receiving alms, wandering about, keeping late hours, addiction to drugs or liquor (especially in the case of older girls); or acts or conduct of such character as to endanger health or morals of one's self or of others. Perhaps a more general and more concise definition is used—conduct or associations of such nature as to require the care and protection of the state.

A special offense to be included in connection with juvenile delinquency, one not committed by juveniles themselves, but by older persons in the way of leading or tempting them into wrong, is known as contributing to delinquency. This may even include, for instance, permitting by parents of evil associations for their children.

AUTHORITY OF JUVENILE COURT

The juvenile court has for the most part been held to be constitutional, its proceedings not being of a "criminal" nature—so far as there are involved due process of law, jury trial, equal protection of the law, confrontation of witnesses, right of bail, etc. The conduct of a juvenile court case is generally such as not to call for a jury trial; but to keep within possible constitutional limitations, the right may be afforded to demand such a trial. Provision may similarly be made for possible appeal to higher courts. Power as to habeas corpus and like matters may be left with a regular court, but with necessary advice from the juvenile court.

Whether the juvenile court should have full jurisdiction over all juvenile offenses is still a question. Uncertainty exists especially as to the proper treatment of a particularly grievous offense, as one punishable in regular criminal courts by capital punishment or by imprisonment for a long term. The attempted handling of such a case by the juvenile court presents some very serious difficulties; while, on the other hand, the transfer of the case from the juvenile court tends in some degree to defeat its very purpose. The juvenile court should have considerable power and discretion in deciding whether it will waive jurisdic-

tion in a given case and let the case pass from its control. As far as possible, it should be allowed to have concurrent direction. In any event only cases of older children should ever be taken from it.

In general, except possibly as to the graver offenses, the juvenile court is to have exclusive jurisdiction over cases coming before it. Occasionally concurrent jurisdiction with some other court whose prerogatives may be concerned may be necessary in the proper disposal of a case.

Jurisdiction of the juvenile court when once entered upon in a given case does not necessarily end with its immediate disposal. With probation it is expected in general to continue. This is also often true when a child is entrusted or committed to some special agency or institution, the court retaining some power as to it, including power as to dismissal, or power to require reports, or power to set general rules for the child's benefit. In certain circumstances the concern of the court may continue after marriage of a person once under its jurisdiction; possibly on such an event the status of one to whom the juvenile court laws have at one time been made to apply is not affected in particular respects.

A special feature of the juvenile court consists of its power, not merely to dispose of a given case to the best interests of the child concerned, but to administer fitting punishment to any adult person who has tempted or led the child into wrongdoing, or who is responsible therefor, or who has "contributed" to the child's delinquency. This is but an extension of the principle of the juvenile court to its logical conclusion. The reasoning involved may even go so far, and have such wide social application, as to grant the juvenile court original jurisdiction over adults, not only as contributing to delinquency, but also to neglect or dependency. Parents are the ones who would in general be the first to be reached in such procedure, the responsibility being forced where it often rightly belongs—upon their shoulders. (Sometimes parents might well be made to pay some part of the costs involved in their child's misdeeds.) Contribution to delinquency, however, is not confined to parents. Other adults causing or inducing a child to go astray should no less be made to feel the rigor of the law. Direct offenses against the child may sometimes be within the jurisdiction of the juvenile court. In some cases for adult offenders the regular criminal court, perhaps as an alternative to the juvenile court, perhaps in cooperation with it, may assume charge of the matter.

The juvenile court is less well adapted for rural sections than for centers of population. In the former areas it cannot well be expected to be in frequent or continuous session, something that is practically a prerequisite for its success. Children who are in trouble may have to undergo some considerable period of confinement before their cases can be attended to—a situation not so easily to be dealt with outside cities and the larger towns. The matter of juvenile courts is also rather closely linked up with the probation system, which as yet has had but little appearance in country districts. For cities special juvenile court judges are advisable; for rural areas regular county judges may answer for a time. In the organization of the juvenile court provision may be made for concord with county or city agencies of public character, especially those concerned with child welfare. There should also be coöperation with private bodies of like nature. The juvenile court should in addition be, on the one hand, under the supervision of some State agency concerned with public welfare, and, on the other hand, in touch with the judicial administration of the State.

AIMS IN JUVENILE COURT PROCEEDINGS

Formal "criminal" proceedings or any steps that might savor of a "trial" would be inconsistent with the character and purposes of the juvenile court. Here the child is to appear, not as a criminal or delinquent, but as a child "misdirected" or "misguided" and "in need of aid and encouragement." The purpose of the proceeding is not so much to prove innocence or guilt, as to disclose what circumstances or surroundings are responsible for the present situation; and to make such disposition of the case as will remedy untoward conditions as far as possible, and will afford the utmost protection against future wrongdoing.

In the juvenile court accordingly there are avoided all appearances of and associations with regular criminal proceedings. The young offender is not permitted contact with older offenders and with their possibly hardening influences. The child is kept from feeling himself a criminal, with consequent false attitudes—on the one hand, of exaggerated importance or of bravado, and, on the other hand, of excessive, irremediable guilt. There is secured ample understanding of the factors involved in the child's misdeeds, especially his social history; and there is permitted a form of treatment best suited to the exigencies of his case.

Efforts are made to establish confidential relations with the child, and to secure his trust, without diminishing in him a sense of the gravity and solemnity of the proceedings. He is encouraged to tell his own story without embarrassment, to speak truthfully and fully, with the admission of any wrongdoing that may have taken place.

In the entire matter much will depend upon the judge dealing with the case. His qualifications should be exceptional: adequate legal knowledge and training; understanding and appreciation of child psychology and child problems and child values; a general realization of the social implications of the procedure, together with the principles of individualization or the case method; and, withal, a generous share of sympathy and patience. The juvenile court judge should become a specialist. To this end, his tenure of office should be relatively long, extending over a period of years; he should give full time if possible. For cases of girls there should be a woman judge, or at least a woman referee.

In the work of the juvenile court a very important consideration is expedition. A case should be heard and attended to with the least possible delay. The holding or detention of the child before his hearing should be reduced to the lowest possible terms, and perhaps its necessity obviated altogether. There should, therefore, be frequent sessions of the court, or at whatever times are required; they should be practically continuous if feasible.

INITIATION OF ACTION

Jurisdiction in a juvenile court case in general begins with the filing of a complaint, often in the form of a petition, or with the placing of the child in custody. The petition may be filed by any reputable citizen or officer of the law, it being declared to be his belief that the child in question is within the provisions of the law. The petition may start with some such expression as "in the matter of," "on behalf of," "in the interest of," "for the welfare of," etc.—phrases that import no action of a criminal or prosecuting nature (as in the case with "against" in an ordinary criminal proceeding).

Complaints having been examined by a judge or other court officer, the child and its parents are notified of the contemplated proceedings. They are directed to appear by summons, or perhaps by citation (instead of through warrant of arrest as in ordinary criminal procedure). Failure to respond constitutes con-

tempt of court, to be punished accordingly. As a reserve measure, if all else has failed, a warrant may be resorted to.

A petition may likewise be filed against an adult person who is responsible for a child's misdoing. In some circumstances bond may be required, especially of parents.

All preliminary matters are handled informally. They are attended to by a juvenile court officer—a woman acting in the case of girls. Police officers are sparingly used, for the most part only temporarily or for purposes of information. If possible, and if desirable, a particular case may be settled out of court, or an informal adjustment attempted.

A very important part in the juvenile court proceedings is the preliminary investigation as to the child, which is promptly but quietly carried out. Report is made to the court before the child is brought in, so as to afford some basis for proper action. This investigation, or social diagnosis, includes a study of hereditary influences, family history, habits and morals of parents, social and financial status of family, school attendance of child, its physical and mental conditions, its habits, associations, amusements, and employment, circumstances and steps leading to its wrongdoing, etc. Information is obtained from the child, parents, neighbors, school, church, employer, etc.

In connection with the proceedings or with the disposition of a case in the juvenile court there arises an excellent opportunity to make both a physical and a mental examination of the child, to determine any possible trouble which may have influenced his conduct, and to suggest needed remedy. Some sort of psychiatric institute in particular may well be regarded as a necessary part of the machinery of the juvenile court. This can be of great help in advising the court as to actual conditions and as to the most suitable treatment in general to be afforded.

CONDUCT OF HEARINGS

Hearings before the juvenile court are held separately from all other judicial proceedings. They may be in a room apart—in quarters expressly provided for the purpose, or in the judge's chambers, or at the detention home, or at some other suitable place. Proceedings are conducted as inconspicuously as possible, with the least publicity attending them. Only interested parties are present—the child, his parent or guardian, court officers or attendants, besides necessary witnesses. The services of lawyers are seldom required. Newspaper notice is discouraged.

Cases are heard in a "summary manner," and proceedings are of "informal character," being rather of chancery nature, but not without a due degree of dignity and impressiveness. The law is liberally construed. The "evidence" presented is not of the same sort as that submitted in a regular criminal trial, but rather such matter as will have a bearing upon the condition and needs of the child, his "social history." The judge is given wide discretion both in the proceedings and in the disposition of the case. Dealings with adults may be more on the order of regular criminal actions. The court is responsible for and in control of administrative proceedings, with actual direction of the child's doings in the hands of the officer whose business it is to attend to such matters.

POSSIBLE ENLARGED FUNCTIONS OF JUVENILE COURT

The juvenile court soon proves itself to be something more than a means for determining whether or not a child has been guilty of wrongdoing. In the investigations and in the disposition of the case, it is led into contact with other agencies dealing with conditions likely to cause juvenile delinquency, or in improving the moral and social environment of the child, including perhaps the general rehabilitation of the child's family. It thus becomes a real social welfare agency, and a constructive force in the community. It joins hands with the school attendance officers, factory inspectors, hospitals and clinics, societies for the protection or aid of children, social settlements, family welfare societies or associated charities, legal aid societies, employment agencies, community and civic organizations, and churches and various religious undertakings.

As the juvenile court has come to concern itself with larger aspects of the child's life than the mere trespass against the law, it has found that its connection with the criminal side of the law need not be its only interest. It could expand its activities to include all children in need with their several problems—delinquency, dependency, neglect, defectiveness. It could deal with children who are homeless, abandoned, destitute, without proper parental care, neglected, cruelly treated, or in surroundings dangerous to morals, health, or general welfare, or in general need of aid or protection. Furthermore, parents or other persons responsible in greater or less degree for the condition of children in need might come within the jurisdiction of the juvenile court. In fact, so closely may the court touch the various prob-

lems of the family that it may cease to center its concerns about the child, and may transfer them to the family as a whole—in which case there emerges the family court or court of domestic relations.

A family court or a court of domestic relations is concerned with the general relations in the home—of husband and wife and of parent and child. It may have jurisdiction as to desertion, abandonment or nonsupport, adoption, orphanage, illegitimacy and paternity, separation and divorce, guardianship, delinquency, child neglect or dependency, mental or physical defectiveness in child, child labor, mothers' pensions, compulsory education. As with the juvenile court, there should be in it broad equity powers, and proceedings should be of relatively informal character.

The question which has now come to confront us is whether the juvenile court dealing primarily with juvenile delinquency is to be superseded by a court of larger powers, juvenile delinquency being simply one of the matters to which attention is to be devoted.¹ Experience alone will disclose what is the best working system. Possibly one system will be found desirable for one community, and another for another. In any event, the fact of juvenile delinquency is not to be lost sight of; nor is it to be explained away by any softer expressions. Some court will have to remain which is able to exert compulsion or punishment, whether upon the child or upon other persons responsible for its wrongdoing. There must always also be a place where the story of the erring child may be told, and where proper treatment for him may be fully considered.²

¹ It is even argued that the question of juvenile delinquency, being largely one of administration, should be without judicial connection. How far any such arrangement would work out in practice is problematical.

² A special phase of the problem of juvenile delinquency and of its proper handling, or a new avenue of approach to it, lies in the bearing of the public school upon it. Why not let the matter of juvenile delinquency pass into the hands of the school authorities, at least so far as concerns a child of school age? Already to the work of the school there are being added clinical facilities, mental measurements, vocational guidance, recreational opportunities, and other matters of greater or less social import. Why not add juvenile delinquency? Here relatively little stigma would attach to the proceedings. The school, moreover, could begin betimes in building up the child's character and resistance to anti-social forces. Many cases now regarded as juvenile delinquents are of school character, estimates ranging from one-fourth up. The school, with its close touch to the child, and with its widely extended influences, might prove a suitable agency to deal with the whole matter of the child's social adjustment.

DETENTION HOMES IN CONNECTION WITH JUVENILE COURT

Children awaiting appearance in the juvenile court may be held by the following means: (1) under the care of their parents at home; (2) under the supervision of some private agency, generally a religious or social agency; (3) in the care of some suitable private home, perhaps a properly qualified boarding home; (4) in the care of some special private child-caring agency or institution; (5) in a public detention home. Children who are to serve as witnesses may have to be provided for similarly. As far as possible, children should simply remain at their own homes, perhaps with a bond on the part of their parents insuring their due appearance. For children without a home, or whose home environment is unfavorable, other arrangements are necessary—preferably with some private home, agency, or institution. A public detention home is necessary for children who may run away or are beyond parental control, who may be of such character as to endanger public safety, or for whom no other suitable provision is feasible. The regular jail, the place of detention for adults held for crime, will never do for children. A special establishment is called for only in the larger cities where a few children at least may always be expected to be under confinement.

When a special detention home is provided, it should afford opportunities for schooling, play, and health supervision. But in no case should the child's stay here be long—his hearing should occur at the earliest possible moment. A child should not have to await his hearing any considerable length of time, preferably not more than a few days. With a juvenile court in frequent session, with prompt investigations, and with adequate court staffs, there will be little occasion for delay in this regard. If a case is disposed of the same day that it occurred, little special provision is called for.

The great, and perhaps the conclusive, objection to the extension of the duties and powers of the school to juvenile delinquency is that the essential task and supreme value of the school in the community is education. It has its hands full with that. The addition of new responsibilities might simply result in a dissipation and deterioration of present efforts. Schoolmen are not fitted for the new undertaking. Many delinquent children, furthermore, are beyond school age, and over these the school could not well exercise control. Finally, no compulsory power resides in the school, something to be found in the courts alone. With respect to juvenile delinquency, the school can do much through a system of school clinics and of visiting teaching. In general it can do its best work in the way of prevention.

POSSIBLE METHODS OF DISPOSAL OF CASES

The disposal of a case in a juvenile court is to be thought of in very simple terms. There is no such thing as conviction or acquittal, or judgment or sentence (as in regular criminal procedure). Whatever action is taken is regarded simply as part of a program designed for the particular wants of the child concerned—so far as possible, for the setting of its feet in the straight path, or for the building up of its character. Emphasis is placed, not upon the nature of the child's offending, or upon its general delinquency, but upon its needs. Even if some penalty is to attach to a child's wrongdoing, and certain assurance of future good behavior is required, this is not to be regarded as a sentence but simply as part of the proper disposition of the case.

A case in the juvenile court may be disposed of in one of the following ways: (1) dismissal, (2) fine, (3) appointment of guardian, (4) requirement of bond from parent for good behavior of child, (5) probation, (6) commitment to a private home, (7) commitment to an agency for the protection of children, (8) commitment to an institution for the care of children. (A very important consideration in the disposition of a case is that it be in accordance with the religious beliefs or preferences of the parent.)

Dismissal may have the effect of, or be a substitute for, an acquittal in regular criminal court, or it may simply indicate that under the immediate circumstances no action is called for. Fining is seldom to be resorted to, savoring too much of criminal action. Possibly restitution for injured or destroyed property may be required to inculcate a respect for property rights. A guardian is to be appointed when such action seems called for or when some individual and permanent attention or supervision is required—especially in the absence or unfitness of natural guardians. Requirement of bond on the part of a parent to insure the good conduct of the child—making the parent recognize his responsibility, provided the parent is fitted and able to keep the child—might at times possibly be of some value. The parent is to see that the child receives care, guidance, and control at his home. Probation or indefinite suspension of specific action by the court is the most important method of disposition, being really a fundamental factor in the whole juvenile court procedure. This probation may be at the child's own home—or in a carefully selected private home—under the general oversight or direction of

a duly constituted probation officer. (The matter of probation in general is to be considered later.)

Next to the child's own home the best place in general for a child in trouble is a proper private home, perhaps a foster home. The placing out of delinquent children, however, is itself a matter attended with serious difficulties, many homes preferring not to receive children of this description; while escape on the part of the child may often prove a rather easy procedure. When placing out operations are deemed advisable for certain cases, they must be conducted with the greatest care. A special private society of high standards and in which general trust is reposed may often be found the most satisfactory resort for dealing with the delinquent child. Such societies are maintained in relatively few communities. All private societies or agencies should be subject to public inspection and supervision, at least in some degree.

The last method of disposal of a case in the juvenile court is commitment to some institution of restraining or custodial nature under either private or public auspices, generally known as a juvenile reformatory, reform school, or industrial school. This means is to be resorted to only as a final recourse, and when other helpful procedure is unavailing. On the receiving of a child by an institution, it may, especially in the event of the termination of jurisdiction by the court, assume full authority, including power to discharge or to place out in some private family, as may appear best. In connection with the work of the juvenile court or the treatment of juvenile delinquency some such institution will remain necessary, and will be the only suitable recourse for a certain type of delinquent children. This will be for several reasons: (1) to provide the only possible means of exerting reformatory influences, probation or other non-institutional treatment being on some ground unfeasible; (2) to afford helpful surroundings when home or other conditions are unsatisfactory, and no other measures are available, a certain proportion of delinquent children being perhaps better off in an institution; (3) to serve as a sort of social quarantine for chronic or incorrigible offenders, or to prevent the contamination of other children from contact with those of particularly vicious qualities or propensities; and (4) to serve as a deterrent, so far as an institution of this character may have such properties. Those committed to a juvenile reformatory are rather of a difficult type, and will probably become increasingly so. The type that is improvable or is amenable to reform is not in general

sent to an institution, but is given other treatment, especially probation.

DEVELOPMENT AND PRESENT EXTENT AND ORGANIZATION OF JUVENILE COURT

The juvenile court in the United States may be said to have had its inception in Massachusetts in 1870 when separate hearings or separate sessions of court were allowed for children, especially those in the care of private societies.¹ In its present form, the juvenile court may be said to have had its beginnings near the beginning of the twentieth century. Chicago in 1899 is credited with its formal inauguration, though action was taken in Colorado, Rhode Island, and Massachusetts at nearly the same time.² Since that time the movement has spread rapidly. Provision for juvenile courts is now found in practically all the States of the Union. In large centers of population they have become the general practice. Some of the smaller cities are still without them. Juvenile courts have as yet been introduced into rural sections only to a slight extent, but with time they will doubtless have wider and wider adoption here, with whatever adjustments may be necessary to meet rural requirements.³

The actual situation, however, as to juvenile courts is much less favorable. Only in the smaller number are there adequate facilities for effective work, including due facilities for investigation. Not a great number, relatively, of juvenile courts can be said to be specially or fully organized. Some may be characterized as little more than nominal. The most satisfactory arrangements are to be found in the larger cities, in some being fairly complete.

There is considerable variation among the several States as to the scope of the juvenile court, or as to the inclusion with it of cases of dependency, mental defectiveness, child labor, desertion, mothers' pensions, etc. In nearly all neglect is provided for, along with delinquency. In addition to special juvenile courts, courts of domestic relations are making for themselves a place

¹ In Chicago in 1861 the Mayor was authorized to appoint a committee to hear juvenile cases. In 1869 in Massachusetts, an agent of the State was required to be present at the trial of children. In 1872, the law of 1870, which at first applied to Boston, was extended to the entire State.

² In several States there was earlier action more or less on the order of the juvenile court.

³ Much of the material relating to the workings of the juvenile court is taken from the publications of the United States Children's Bureau.

in legal proceedings as to the child, in some communities absorbing the functions of the former. They are often a branch of a county or municipal court.¹

The policy hitherto for the most part employed for juvenile courts has been to utilize an existing court or a branch thereof for the purpose—generally some county court, perhaps a probate court. This has been especially the procedure in smaller communities. An increasing aim is to have special judges for the juvenile court, their work here being apart from all other work. Judges giving full time are most often found in the larger cities. Where the office of juvenile court judge is specially created by the law, the judge may be appointed by the Governor of the State, the Mayor of the city concerned, or by the judges of a higher court; or he may be directly elected by the people. If the judge is simply a regular judge giving part of his time to the juvenile court, little special machinery has in general been called for. If there are several who may act, they may be simply designated for the purpose, perhaps in rotating order in relation to each other, or may be assigned for particular times. When periods of service are definite, they range from one to ten years. In some States provision is made for special referees, particularly women referees to hear girls' cases. In some States the qualifications of juvenile court judges are specified in respect to age, experience, etc.

In a considerable number of States some county board dealing with children, as a board of county visitors, board of children's guardians, child welfare board, etc., is empowered to assist in the administration of the juvenile court laws. Such boards investigate, supervise probation, inspect agencies to which children are committed, and render whatever advice or other assistance they may. In some States periodical reports are required of the work of juvenile courts to some State agency. In some States some central agency, as a State board of charities or public welfare, has power to supervise or to promote standards of administration.

There is considerable latitude in the juvenile courts as to the time of hearings. In advanced jurisdictions there is a tendency to allow them frequently, or at all times, some courts in fact being in practically continuous session.

In some States formal criminal proceedings against a child

¹In a few communities there is specialized treatment of youths above juvenile court age, usually in connection with a branch of the municipal court.

offender are directly prohibited. In some, evidence is not allowed as to previous misdoing.

In most States having juvenile court laws the age limit is eighteen years; in the remainder it is a year or two less, or till twenty-one. The age for boys is often a year higher than for girls. The age limit may possibly be a little different with respect to the more serious offenses, especially capital offenses. In many States jurisdiction of the juvenile court continues during minority; in some it may continue even after marriage.

In general when there is involved a serious felony, or an offense as a rule punishable by death or by long-term imprisonment, especially if the offender is above a certain age, as sixteen or fourteen, the juvenile court may be barred from proceeding with the case, or may at its discretion dismiss it to a regular criminal court, or may perhaps act concurrently with it.

In nearly all States with juvenile court laws there is reference to contribution to delinquency, especially on the part of the child's parent. This offense is generally regarded as a misdemeanor, punishable by fine, often with the possibility of suspension of sentence or probation. Provisions of the law as to contributing to delinquency have in many jurisdictions not been enforced as they should have been.

Proper provision for the detention of children awaiting action in the juvenile court is not generally found. The best and fullest facilities are in the larger cities, some having special homes for the purpose, and some providing for children in private homes or making arrangements with private agencies. In most States it is forbidden that a child be kept in jail or police station, though in a few special quarters in a jail are permissible. Sometimes, however, the regular jail is still employed. In over one-half of cases no departure from the child's home is necessary, proceedings being completed without the requirement of overnight care elsewhere.

The larger number of juvenile courts are as yet without the valuable appendage of a psychiatric clinic for the furtherance of their work. In some instances there are fairly well equipped institutes, perhaps supported or at least initiated by private means. In certain cities greater or less aid in the examination of the mental condition of children is received from some public institution, usually a hospital for the insane or an educational institution. Sometimes assistance is proffered by local physicians.

Of cases before juvenile courts a large part are dismissed or have an equivalent disposal. With the remainder the method

most frequently employed is probation, this form of treatment being adopted for probably not less than three-fourths, and in advanced courts for not less than nine-tenths. Possibly one-fourth or one-fifth are committed to some private family or agency or to some institution, the larger part of these going to a reform school. For extremely few is fining ever employed. The balance are otherwise disposed of. The proportions vary in different jurisdictions. Often by legal requirement the disposal of a case must harmonize with the religious beliefs or preferences of the child's parents. Girls in general are the more frequently committed to an institution. Older children of both sexes are also more likely to be so committed.

With boys, the disposition most likely in respect to injuries to the person is dismissal (or indefinite continuance of case); in respect to stealing, truancy, sex offenses, and violation of liquor or drug laws, probation; in respect to acts of carelessness or mischief, dismissal or fine (or costs); in respect to running away, probation, dismissal, or commitment to an institution; and in respect to being ungovernable, probation or commitment to an institution. With girls, the treatment is largely similar, except that dismissal is also likely in respect to truancy, and commitment to an institution in respect to sex offenses.

Of cases of boys before juvenile courts in 65 cities in 1928, 59 per cent required no absence from home or were heard the same day; 27 per cent, detention home; 9 per cent, other institution; 4 per cent, jail or police station; and 1 per cent, other provision. The respective percentages for girls were 50, 31, 13, 2, and 4. For 30 per cent of boys there was dismissal or indefinite continuance; for 43 per cent, probation; for 14 per cent, commitment to an institution; for 7 per cent, restitution, fines, or costs; and for 6 per cent, other disposition. The respective percentages for girls were 22, 41, 26, 1, and 10.¹

Private agencies for the control of children from a juvenile court, apart from one's own family or other private family, are mainly societies which have been organized, principally in the larger cities, for the care or protection of children. Here children may in general remain till there is evidence of improvement. Many States authorize the entrusting of a child to a properly accredited agency for children or to a private family.

In practically all States is permitted commitment of children to some private or public institution of a reformatory nature.

¹ Children's Bureau Publications, No. 200 (Juvenile Court Statistics, 1928), 1930.

Sometimes direction in the matter is given largely to a State board of charities or to some local agency. In some cases after a child has been placed in the hands of an agency or institution the juvenile court may continue jurisdiction for a longer or shorter period, or at least have some degree of control as to such child. In other cases the court's jurisdiction may terminate on the entry of the child into an institution, the latter now having full power as to it.

Juvenile courts to-day have nearly all offenses committed by children within their jurisdictions brought before them. The larger number of cases are referred by the police, the remainder by parents, schools, etc. A constantly increasing number of cases are informally or unofficially adjusted, a considerable part thus being settled out of court (thefts and sex offenses being relatively least). Requests for jury trials and appeals are few. One special difficulty that has appeared in administering the juvenile court laws has been in connection with feeble-minded children, or with children of abnormal or deficient mentality.

While the juvenile court has sometimes been started with inadequate or imperfect organization or facilities, sometimes with limited expert guidance, and sometimes before general community sentiment has been built up sufficiently to appreciate its implications, and while defects and weaknesses of different kinds have appeared, nevertheless the principle at least is to be called a success. The juvenile court in the United States has been a developing institution; on the whole it has steadily gained strength. Procedure will doubtless undergo considerable modification as determined by experience; but the institution is itself to be regarded as an established one. It has perhaps not accomplished all that has been claimed for it, but it has made a distinct and vital contribution alike to the treatment of the child and to the treatment of crime by society.

PART IV
EXTENT OF CRIME IN THE
UNITED STATES

CHAPTER XXII

RELATION BETWEEN EXTENT OF CRIME COMMITTED AND EXTENT OF PUNISHMENT INFLICTED

MEANS OF ESCAPE FROM CRIMINAL PROSECUTION

Of all the crime committed in the United States a considerable part is not brought to book. The criminal law of the country must stand by and witness the escape of no small proportion of those who defy and break it—who avoid the net of penalization which it has so carefully prepared. In the battle between crime and law the former in large measure outwits the latter, and gets the better of it. With the transgressor against the law there reside certain definite advantages. Sudden and unexpected is his attack; of his choosing are the time and place for striking; in the dark are his ways and actions; ready at hand are avenues of escape, all the more arrant with the swift automobile of to-day. The law often has a foe at once shrewd and desperate; and it is only through the highest intelligence and the possession of a full arsenal of weapons of the most modern and the most scientific construction that it can hope to make headway against his depredations, and finally to lay a conquering hand upon him. Till the law is in position better to cope with the criminal, it must rest content with only a portion of those guilty of its infraction met and beaten.

Matters are made the worse for the law when it looks to see what manner of offender it has succeeded in drawing within its toils. There it finds, on the one hand, the weaker members of society, the more or less mentally irresponsible, and those who, not in general of vicious or anti-social character, are suddenly confronted with temptation to crime and are not prepared to steer clear of it; and, on the other hand, the less alert of the criminally inclined, the less light-footed, the less neat-handed, the less keen-eyed, the less nimble-witted, the less wary, the less cunning, the less adroit, the less slick, the less crafty, the less artful, the less skilled, the less resourceful, the less cool, the less calculating, the less experienced, the less proficient, the less ac-

complished, the less insensible, the less heartless, the less depraved, the less infuriate. It is the opposite classes of the criminal population that too often slip away from the pursuing hand of the law and remain strangers to it. The one most likely to go unwhipped of justice is the one which has come to be made up of the professional criminal.

Not to be overlooked is the circumstance that a single offense against the law may have a number of persons engaged in its commission, all combining their strength and resources for its effectuation. To a certain extent in fact crime is of a systematized or organized character. A portion of the criminal element has a code and technique of its own to help it encompass the defeat of the law. The forces of the law have often to deal, not with single individual offenders, acting alone and apart, but with primed bands, intent on gaining their criminal ends. The several faculties and qualifications of its members are pooled, and there are gained all the benefits and advantages accruing to organization and coöperation.

Equally to be borne in mind is the circumstance that a number of crimes may be laid at the door of the same offender. This may be one who has become trained and expert in the practice of his profession.

In a greater or lesser measure these two considerations serve to counterbalance or to offset each other, though just how far cannot be said. It is possible that in the long run, or sooner or later, whatever the number of offenses accounted for, the greater number of offenders are overtaken by the arm of the law.

After the criminal's encounter with the law, it is not to be thought that he is forthwith dispatched toward his due penalty. He may yet find that he can outreach criminal justice and come off victorious. Of those who are caught within the legal meshes the smaller number are made to pay for their supposed misdeeds, or to receive punishment. There are some, of course, who are innocent, and who deserve to be set free.

In the process of criminal prosecution, which is a sort of sifting-out process, a large number of cases drop off by the way by virtue of dismissal, lack of full accusatory action, or formal liberation. Criminal proceedings are in considerable degree tortuous and long drawn-out, and a heavy mortality is inflicted upon the cases passing through. At various stages is halt or discontinuance of proceedings possible. In position to further or to bring on such an issue are all of those factors or agencies having a part in the transactions against the offender—the

arresting police, the magistrate or police judge at the preliminary hearing, the grand jury with its jurisdiction in the matter of indictment, the trial court with its authority in the determination of the question of guilt, the appellate court with its prerogative of review, and perhaps the Governor of the State with his right of pardon—while throughout there remains much power vested in the hands of the public official whose duty it is to prosecute, to move or not to move.

The first method of formal elimination of cases, after apprehension of the offender, in criminal procedure, or through action of the police, is to be regarded as of little real consequence, and for practical purposes may be largely discounted. It is of relatively infrequent occurrence; when it does take place, it is largely in the form of transfers to other authorities for action.

The next stage, or that of the preliminary examination, where criminal charges are definitely preferred, is perhaps the most important of all, so far as concerns the number of cases to be halted. The magistrate or justice of the peace here is clothed with considerable power in the disposal of cases coming before him. A case may be dismissed outright (or perhaps continued indefinitely), and the accused person straightway let off. This action, however, does not necessarily certify to his innocence; it may simply mean that the case against him is poorly prepared, or that the evidence is insufficient to hold him. No *prima facie* case, or one capable of being passed on to the attention of the grand jury, is deemed to be made out. Now and then a case is dropped at the instance of the complaining witness. (Occasionally unwillingness of a witness to testify is due to intimidation.) Dismissal of a particular case may also be justified when a more serious charge may perhaps be brought. A like situation exists when another jurisdiction is involved.

Sometimes the offense charged may be changed to one of lower order, as from a felony to a misdemeanor, in which event the lower court may assume jurisdiction, no reference to a higher court now being called for. Such reduction in the degree of the offense may be for some good reason, as a belief that under the circumstances a conviction for the lesser offense is all that can reasonably be hoped for, that half a loaf is better than none, or that otherwise a given case will fall to the ground. Sometimes this action is due largely to a desire for a speedy and inexpensive disposal of a case, it being not infrequently rather the policy of the law to allow such procedure. (Now and then a case may be dismissed on payment of court costs.) Sometimes a lesser plea

may be encouraged on the part of the judge by reason of fear that the penalty for the more serious offense is too severe. Sometimes the reduction is little more than the result of a sort of compromise or bargain between the accused and the prosecuting officer, whereby the former in return for his agreement to accept a charge of a lesser offense is given a lighter sentence, or is possibly placed on probation. Occasionally it happens that the higher charge is brought as a sort of bluff or as a threat to induce confession as to a lesser offense. With the prosecuting officer in general rests much latitude in checking or discontinuing criminal action, especially through "nol-pros," "no papers" (an equivalent often being striking off with leave to reinstate), etc. Eliminations at preliminary hearing take place to a larger extent in urban centers, where not a few "suspects" are brought in to see if there are any grounds for holding them.

A certain proportion of cases in addition at this stage or at a later stage are thrown out by reason of forfeiture of bail, mental disqualification of the accused, transfer of case to another court, etc. Release through suspension of sentence or probation may also be possible here for some cases.

Of cases terminated at the next higher stage, or through action by the grand jury, nearly all, in most States, are "no-billed," or have no indictment found, the grand jury being unwilling or unable to present charges upon the evidence before it. The remainder are stayed by reason of death, insanity, other conviction of the accused, or on some equivalent ground. Should indictment be found, the accused is then called upon to defend himself in formal trial, and is proceeded against in definite action.

At the trial the chief means by which conviction may fail to be obtained, by which proceedings against the accused may be brought to an end, and by which he may get off for good is a verdict of acquittal by the jury. Such result is possible in addition by action of the prosecuting officer in directing dismissal (usually with approval of the court), and by action of the court in accepting motion of the defendant for dismissal (especially when evidence is weak). With both the prosecuting official and the trial court rests certain power in the proceedings. Other possible means of discontinuing action in a given case are disagreement on the part of the jury (with mistrial postponement at least resulting), adjudgment of mental incompetency of the accused, death of accused, action upon a prior charge, transfer to another jurisdiction, etc. Some of the grounds for discontinuance available

at the preliminary hearing are available here as well. It is likewise possible at this stage to have a charge reduced from a higher offense to a lower.¹ When conviction occurs, it may be not only the result of trial by jury, but of a plea of guilty by the accused. In the matter of conviction much depends upon the ease with which an offense may be proved.

In pleas of guilty in criminal proceedings there may, both at the preliminary hearing and at the trial court, be involved pleas with respect to less serious offenses than those originally charged. There may also be included changes of plea from plea of not guilty to plea of guilty. When pleas of guilty are made, they are, like the reduction of an offense from a higher to a lower degree, often the result of an agreement entered into with the prosecuting official or with the court for the imposition of a lighter sentence than would otherwise be the case. At times this may be simply the result of efficient police action. They are sometimes encouraged or permitted because of the unavailability of necessary witnesses, for the purpose of relieving a congested court calendar, or upon like grounds. When a plea of guilty to a lesser offense is accepted, however, the real upshot of the matter may be either punishment for an offense not actually committed, or freedom from punishment for an offense that has been committed.

The principal means of holding up the execution of sentence, or of avoiding the consequences of conviction, lies in suspension of sentence or in probation, which may be looked upon as a substitute for or an alternative to actual imprisonment in case such is the form of punishment inflicted.² In addition, there remains appeal to an appellate court for a review of the proceedings, in which the case may be directly reversed, or remanded and sent back to the trial court for a new trial. Finally, there may be application to the Chief Executive of the State for the exercise of clemency or pardon, this being a right permitted in practically all jurisdictions.

From the beginning of the proceedings, as has been indicated, to the end much power is placed in the hands of the prosecuting official. In the prosecution of a given case no little may depend upon his activity and good judgment. Of moment at times may be the matter of securing good evidence, and consideration of

¹If a higher offense is found to have been committed than has been charged, the case may be discontinued, and proper action directed.

²The matters of probation (with suspension of sentence) is considered in Chapter LIV.

general public interests. Sometimes when "nol-pros" or similar action is frequent, dismissal or its discontinuance through other means is infrequent; and *vice versa*.

PROPORTION OF CRIMINAL CASES REACHING SEVERAL STAGES OF CRIMINAL PROSECUTION

Attempt may now be made to discover, from what data are at hand, the approximate proportion of offenders against the law who are brought within criminal prosecution, or are made to suffer for their misdeeds, and the approximate proportion who are freed at different stages of the proceedings. In a few States and in certain cities a beginning has been made in the collection of statistics upon the subject; and it is upon such criminal records that our figures are to be based. It is to be remembered that these statistics are but fragmentary, and that they refer only to a particular period of time, possibly not being exactly the same for a different period. (In several instances improved results are reported subsequently to the present data.) It is quite to be expected, moreover, that different results for different communities are to some extent ascribable to different methods of approach or to different standards and definitions. The figures presented are to be taken with these qualifications.¹ What now appears as somewhat confused and uncertain will in the future be clearer and more trustworthy.

Of the extent of crimes which are not reported to the police, or

¹The statistics in this chapter are taken from the following: Missouri Association for Criminal Justice, Missouri Crime Survey, 1926; Report of Crime Commission of New York State, 1926, 1927, 1928; Illinois Association for Criminal Justice, Illinois Crime Survey, 1929; Report of Pennsylvania Commission Appointed to Study Laws, Procedure, etc. Relating to Crime and Criminals, 1929; Pennsylvania Crime Commission, Probation and Parole of Offenders, 1929; Cleveland Foundation, Survey of Administration of Criminal Justice, 1922; Raymond Moley, Outlines of Cleveland Crime Survey, 1922; Pittsburgh Council of Churches, Crime and Its Treatment, 1924; Law Association of Philadelphia, Report of Crimes Survey Committee, 1926; Cincinnati Bureau of Municipal Research, Pamphlet No. 5, 1928; City of Memphis, Department of Health, Study of Violent Deaths Registered in Atlanta, Birmingham, Memphis, and New Orleans, 1922; reports and other publications of Baltimore Criminal Justice Commission; reports and other publications of Chicago Crime Commission; *Journal of American Institute of Criminal Law and Criminology*, Aug., 1925, Nov., 1926, May, 1927, May, 1929, and *passim*; *Political Science Quarterly*, Dec., 1927; *Annals of American Academy of Political and Social Science*, Nov., 1929; *American Journal of Sociology*, July, 1928, May, 1929; *Minnesota Law Review*, Jan., 1927 (supplement).

which are not known to the public, we have no means of knowing; but it is undoubtedly very large. Of reported cases of felony in general, hardly more than one-half, sometimes less than one-half, are apprehended, or undergo arrest. The proportion varies in different jurisdictions. (The figures here given are not intended to be more than rough approximations. In some cases certain offenses are considered together.) In Cleveland (1919) it is approximately from one-third to nine-tenths for different offenses, for most from one-half to two-thirds; in St. Louis (1924), from one-tenth to one-third, for most little above one-tenth; in Baltimore (1923-1927), from one-third to nine-tenths, for most from one-half to three-fourths. In certain other communities the proportion ranges from one-fifth to one-third. The proportions (1928) in certain cities (without reference to automobile crimes) are reported as follows: Los Angeles, one-tenth; Rochester, one-eighth; Detroit, three-tenths; Baltimore, two-fifths; Cleveland, nine-twentieths; and Buffalo, two-thirds.

Of known cases of crime, especially felonies, there are as a rule much less than one-half, possibly not over one-third, perhaps much less, having conviction. The proportion in Cleveland and St. Louis is approximately one-tenth; in Cincinnati (1926), one-sixth; in Baltimore, from one-ninth to one-half, for most offenses from one-third to two-fifths; and in Chicago (1923), three-tenths.

Criminal cases disposed of by the police (in the few jurisdictions having record of this) are very few, and usually amount to a trivial proportion. Nearly all arrests thus pass on to the preliminary examination.

Of cases appearing at preliminary examination, the proportion held to answer, or for grand jury action, ranges from one-fifth or one-third to five-sixths. In San Francisco (1926) it is approximately one-fifth, in Pennsylvania (four cities) (1926) one-fourth, in Chicago (1926) and New York City (1925) two-fifths, in Illinois (1926), New York State (1926), and Cincinnati one-half, in Missouri (1924) and Cleveland (1927) three-fourths, in Baltimore and Pittsburgh (1921) four-fifths, and in Milwaukee (1926) five-sixths. Of cases at preliminary hearing which later have indictment the proportion ranges from one-fourth to two-thirds, usually under one-half, possibly not over one-third, sometimes from one-fifth to two-fifths. In Pennsylvania it is approximately one-fourth, in New York City three-tenths, in New York State, Cincinnati, and San Francisco one-third, in Chicago and Illinois two-fifths, in Baltimore three-

fifths, in Cleveland two-thirds, and in Missouri seven-tenths. Of cases at preliminary hearing resulting in conviction the proportion is usually less than one-half, sometimes considerably less, perhaps about one-fourth. It is approximately one-eighth in Pennsylvania, one-fifth in New York State, Illinois, New York City, Chicago, and San Francisco, one-fourth in Cincinnati, three-tenths in Pennsylvania, two-fifths in Missouri, one-half in Cleveland, Pittsburgh, and Baltimore, and two-thirds in Milwaukee. Of cases at preliminary hearing having sentences executed the proportion is as a rule not far below that for convictions.

Of cases coming before the grand jury, some three-fourths or more are indicted. The proportion is approximately seven-tenths in Chicago, three-fourths in New York State, New York City, and Cincinnati, four-fifths in Illinois and Cleveland, five-sixths in Pennsylvania, and nine-tenths or more in Baltimore and Missouri. Of cases coming before the grand jury close to one-half or more have conviction, and a nearly equal proportion execution of sentence.

Of cases reaching the trial court, usually over one-half, possibly two-thirds or three-fourths, are convicted (convictions including pleas of guilty as well as convictions after jury trials). The proportion is approximately one-half in Missouri, Pennsylvania, Illinois, Chicago, and Cincinnati; three-fifths in Illinois and Georgia (five counties) (1923); two-thirds in New York State and New York City; three-fourths in Cleveland and Milwaukee; and four-fifths in Baltimore. A proportion not greatly less have execution of sentence.

Of cases where conviction is secured, sentence is carried out generally in from three-fourths to five-sixths, possibly a slightly smaller proportion, possibly a much larger, sometimes nearly all. The proportion is approximately two-thirds in New York State, Pennsylvania, and Milwaukee, three-fourths in New York City, four-fifths in Illinois, and five-sixths in Missouri.

In the matter of appeal after conviction the situation is somewhat more favorable as compared with preceding stages in criminal proceedings. The number of appeals taken is itself in general relatively very small. In Illinois and Milwaukee the proportion is less than 1 per cent. Of cases brought before appellate courts the majority are upheld, the smaller number being overruled or sent back to the lower courts for retrial. In certain States about two-thirds of cases appealed have been found to be affirmed, and about one-third reversed or remanded to

the lower court. In some States formerly from one-sixth to one-half of convictions were set aside, while at present the proportion is seldom as great as one-tenth. In Missouri from 1915 to 1924 there were 43.6 per cent of appeals reversed or remanded. In Ohio from 1921 to 1927 of appeals for review 76.4 per cent were denied. Of cases appealed from Cleveland in one year about one-fourth are remanded or reversed. In California from 1850 to 1926 there were 27.1 per cent of appeals reversed. In some of the earlier years of this period the proportion was one-half; from 1920 to 1926 it was only 14.7 per cent. In Illinois two-fifths of appealed cases are remanded or reversed; of these cases about one-fourth are reversed. Of appealed cases, however, which are remanded, much the larger part result in the discharge of the accused, on occasions the proportion for such being several times the proportion for those who suffer penalty. In Illinois of cases reversed or remanded, 15.8 per cent are subsequently convicted.

From what has been said certain observations are now in order by way of summary with respect to the possible success of the legal machinery in the apprehension and punishment of offenders in the aggregate in selected communities in the United States—not necessarily typical of conditions in all communities, but perhaps fairly representative of conditions in general. The figures used are intended, it is to be understood, only as the roughest approximations for a limited number of communities, and at a certain period. They can perhaps best be regarded as *what appears a fair average, or a mean between the higher and the lower figures, for certain communities, at a given time.*

Of felonies committed, about one-half result in arrest (with preliminary examination); about one-fourth, in holding for grand jury action; about one-fifth, in indictment; about one-eighth, in conviction; and about one-tenth, in execution of sentence of conviction.

Of arrests or cases at preliminary examination, about one-half are passed on to the grand jury; about three-eighths result in indictment; about one-fourth, in conviction; and perhaps one-fifth, in execution of sentence.

Of cases held for grand jury action, at least three-fourths result in grand jury indictment; about one-half, in conviction; and about two-fifths, in execution of sentence.

Of indictments (with subsequent trials), close to two-thirds result in conviction; and perhaps close to one-half, in execution of sentence.

Of convictions, four-fifths or more result in execution of sentence.

Some of those charged with crime, it is to be remembered, are innocent, and should have release.

Inquiry may now be made as to the manner of disposal of cases at different stages of criminal procedure. Of those cases which are eliminated at preliminary hearing, from one-fifth to over four-fifths, in general over one-half, are summarily dismissed or have no prosecution (including action of prosecuting official in "nol-pros," etc.). The proportion in Georgia is approximately one-fifth; in New York City, two-fifths; in Chicago, one-half; in New York State and Pennsylvania, three-fifths; in San Francisco, two-thirds; in Missouri, three-fourths; and in Illinois, practically all. The proportion of cases where the offense is changed to one of lower grade may be one-third, or one-fourth, perhaps only a small percentage. In San Francisco it is one-twentieth; in Missouri, one-ninth; in New York City, one-fourth; and in New York State, one-third. The remaining cases are distributed among different causes.

Of cases eliminated by grand jury action, virtually all are no-billed—this proportion seldom falling below nine-tenths or seven-eighths.

Of cases eliminated at the trial court, varying proportions are to be ascribed to the several chief causes. For acquittal the most frequent proportion seems to be near one-third. It is in Missouri one-seventh; in Chicago, three-tenths; and in New York State and Pennsylvania, one-third. The proportion for dismissal by court or through motion of the defendant seems to vary from one-ninth to one-third. It is in Missouri and Pennsylvania one-ninth; in Illinois, one-fourth; in New York City and Chicago, three-tenths; and in New York State, one-third. The proportion for dismissal through action of the prosecuting official seems most often to be near one-third. It is in New York State, Milwaukee, and Atlanta one-tenth; in Chicago and Minneapolis (1926), one-fourth; in Illinois and Pennsylvania, one-third; and in Missouri, one-half. The remainder of eliminations is divided among different causes. Disagreement of jury appears in general to constitute but a very small percentage.

Of cases eliminated through failure to carry out sentence, nearly all in most jurisdictions are due to suspension of sentence, together with probation. In Missouri three-fourths are due to pardon, and one-fourth to appeal.

Of all cases eliminated at some stage of prosecution, a notable

proportion are ascribable to direct action of the prosecuting officer, perhaps from one-tenth to one-fourth. It is approximately one-tenth in New York City, Baltimore, and Cincinnati, one-sixth in Pennsylvania, and one-fourth in Chicago. In some cases the proportion is larger before indictment; in other cases, after indictment.

The proportion of arrests disposed of by jury trial is relatively very small, often not over one-tenth or one-eighth. In Chicago it is one-twentieth, in Cleveland one-eighth. Jury trial is growing less with time.

At the trial court conviction is obtained as a general thing more commonly than acquittal—conviction including both that after plea of guilty and that after plea of not guilty with trial. With juries on the whole conviction is much more frequent than acquittal, sometimes several times as frequent. In some jurisdictions the proportions are not far apart.

In some jurisdictions convictions through pleas of guilty (including change of plea of not guilty) and convictions through jury trial after pleas of not guilty are about equal. In other jurisdictions the former are several times as frequent as the latter, perhaps three or four, or more, times as frequent. In some jurisdictions, furthermore, most pleas of guilty relate to the original offense charge; in other jurisdictions pleas with regard to a lesser offense outnumber pleas with regard to the original offense.

In the following table is given the percentage distribution of pleas offered in trial courts in New York State (1925) with respect to felony.

PERCENTAGE DISTRIBUTION OF PLEAS IN NEW YORK STATE

Nature of Plea	Per Cent Distribution
Total	100.0
Plea of guilty to offense charged	15.8
Plea of guilty to other offense	11.2
Plea of not guilty changed to plea of guilty as to offense charged	13.0
Plea of not guilty changed to plea of guilty as to other offense	24.8
Plea of not guilty unchanged	32.3
Other pleas	2.9

Here almost two-thirds (64.8 per cent) of pleas, as finally offered, are pleas of guilty. Less than one-third of all pleas, and

less than one-half of pleas of guilty, are pleas as to the offense charged (28.8 per cent); and over one-third of all pleas, and over one-half of all pleas of guilty, are as to other offenses (36.0 per cent). In pleas of guilty about nine-sixteenths are as to other offenses.

Of convictions in Chicago (1926), 10.9 per cent are in the case of felony waived and misdemeanor determined by the court; 34.1 per cent, in the case of felony waived and plea of guilty of misdemeanor; 17.1 per cent, in the case of plea of guilty of offense charged; 29.5 per cent, in the case of plea of guilty of lesser offense; 7.4 per cent, in the case of conviction by jury of offense charged; and 1.0 per cent, in the case of conviction by jury of lesser offense. In Cleveland one-fourth of arrests result in plea of guilty.

With plea of guilty there is far greater chance of suspension of sentence or probation. In Illinois probation is given over twice as often in the case of plea of guilty.

Of cases on appeal which are remanded or reversed the majority may not always have substantial reason. They are often for some error in the nature of the evidence allowed or in the instructions given. Of cases remanded in certain States (27.8 per cent), 17.0 per cent were because of questions of law involved, and 10.8 per cent because of procedure in the trial court. There were 5.8 per cent reversed outright. Of cases remanded or reversed in Missouri 35.7 per cent were due to error in instruction by the trial judge, 19.7 per cent to error in the admission of evidence, 18.6 per cent to insufficient evidence for the authorization of a verdict, and 8.6 per cent to defective indictment. The remaining causes were several, including violation of some constitutional provision. (Of all cases 31.5 per cent were dismissed because the appeal was not perfected.) In Illinois of appealed cases from 1917 to 1927 which were remanded or reversed, about one-fourth were because of error in instructions to jury; one-fourth, because of error in admitting or rejecting evidence; one-fifth, because of insufficient evidence in conviction; one-tenth, because of misconduct on part of trial court; one-tenth, because of misconduct on part of counsel; about one-twentieth, because of defective indictment; and about one-twentieth, because of some constitutional matter. In California from 1850 to 1926 of all appeals 83 per cent were because of "procedural errors." Most constitutional difficulties relate to due process of law, self-incrimination, etc.

So far as comparison is possible (especially in Cleveland)

between the dispositions of felony and of misdemeanor cases, the proportions are not greatly different as to discharges by police, "nol-pros," "no papers," etc. In other particulars rather wide variations are sometimes found. In some instances there are a greater proportion of misdemeanors dismissed or discharged; in other instances, a greater proportion of felonies. In three cities in Connecticut (1926) from one-fifth to one-tenth of misdemeanors are dismissed. The proportion of misdemeanors punished seems generally to be about three-fourths. This is the proportion in Cleveland. In Connecticut it is from three-fifths to four-fifths.

In misdemeanor cases convictions are obtained the more frequently through pleas of guilty than through trials resulting in convictions after pleas of not guilty. In Cleveland the proportion of convictions through pleas of guilty is almost three-fifths; in Connecticut, over one-half; and in Georgia, slightly over one-half. In some jurisdictions pleas of guilty are far more frequent for misdemeanors than for felonies.

The time required in American criminal procedure for handling a criminal case, especially one of felony, varies considerably. In general from one to four months, the more often somewhat under two months, is necessary from the time of arrest to the time of final disposal (exclusive of appeal). The time is shortest when plea of guilty is offered, and longest when trial by jury is involved. Much of this time, sometimes the larger part, is required for action by grand jury. With appeals two years is a frequent time for the final disposal of a case.

SITUATION AS TO PARTICULAR OFFENSES

There may also be indicated to a certain extent, but with all the qualifications already mentioned, the relation between offenses committed, arrests, and convictions for particular forms of offenses. With respect to murder and manslaughter (which may be regarded as constituting most of "unjustifiable homicide"), the proportion of arrests ranges from one-fifth or one-fourth to two-thirds or three-fourths. In San Francisco it is approximately one-fourth (for murder), in St. Louis one-third, and in Pittsburgh (1920-1923) one-half. In certain other cities the proportion is one-half, or even more. The proportion (1928) of arrests among known homicides is one-fourth in Buffalo, three-fourths in Detroit, nine-tenths in Cleveland, and nineteen-twentieths in Baltimore.

The proportion of convictions among known cases of murder

and manslaughter ranges from one-tenth to one-half. It is approximately one-sixth in St. Louis, one-fourth in Pittsburgh, three-tenths in New York State, from one-fourth to two-fifths in Chicago, and one-half in Baltimore (for murder). In certain other cities it is about one-third or two-fifths.

The proportion of convictions among arrests for murder and manslaughter, or for homicide, ranges from one-eighth or less to three-fourths. It is one-eighth in Pittsburgh, one-sixth in Illinois, one-half in Baltimore (for murder), two-fifths in Milwaukee, and two-thirds in St. Louis.

In some cities from one-half to two-thirds of arrests for murder are indicted. Of murder cases tried the proportion resulting in conviction is from one-third to two-thirds.

In New York State of murder cases on appeal about one-eighth are remanded or reversed. Of such cases nearly three-fifths are subsequently acquitted, one-tenth resentenced and executed, and one-third resentenced to a lesser degree of punishment. From 1887 to 1922 of capital cases in this State 14 per cent were remanded, and 1 per cent directly reversed.

Of homicides in Pittsburgh from 1920 to 1923 the results were as follows: no suspect named, 33.9 per cent; suspect dead, 5.2 per cent; suspect not arrested, 11.2 per cent; case ignored by grand jury, 3.0 per cent; case "nol-prossed," 0.5 per cent; offender declared insane, 1.4 per cent; acquittal by jury 17.8 per cent; conviction of involuntary manslaughter, 3.3 per cent; conviction of voluntary manslaughter, 8.5 per cent; conviction of murder in the second degree, 9.3 per cent; conviction of murder in the first degree, 3.0 per cent; case pending, 2.8 per cent. For those convicted punishment was inflicted as follows: fine, 2.3 per cent; imprisonment in jail for less than one year, 6.8 per cent; imprisonment in jail for from one to two years, 6.8 per cent; imprisonment in State prison for from one to five years, 10.5 per cent; imprisonment in State prison for from six to twenty years, 58.2 per cent; death penalty, 9.3 per cent; parole, 2.3 per cent; pending, 3.4 per cent. Of homicides in four southern cities (1921, 1922) the results were as follows: death penalty inflicted, 0.9 per cent; death penalty commuted to life imprisonment, 0.4 per cent; imprisonment for life, 3.0 per cent; imprisonment for from nine to thirty years, 3.3 per cent; imprisonment for from one to nine years, 5.2 per cent; imprisonment for unknown period, 0.8 per cent; suicide of offender, 1.5 per cent; offender killed by officer, 0.9 per cent; exoneration by officers, 5.5 per cent; exoneration by grand jury, 3.3 per cent; acquittal, 10.7 per cent;

dismissal or "nol-prossed," 6.7 per cent; pending, 6.2 per cent; no data as to penalty, 51.6 per cent.

For other offenses against the person besides homicide there are varying proportions as to the several means of disposal in criminal procedure. Some have a ratio of indictments to arrests of one-half or less, sometimes of one-third. With respect to assault there are in Baltimore arrests for five-sixths of cases, and convictions for one-tenth. The proportion of convictions among arrests is one-twelfth in Baltimore, one-seventh in Illinois, and three-fifths in Milwaukee. With respect to rape there are in Baltimore arrests for nine-tenths of cases, and convictions for three-eighths. The proportion of convictions among arrests is one-sixth in Illinois, two-fifths in Baltimore, and two-thirds in Milwaukee. The proportion of convictions among arrests for other sex offenses is one-fourth in Illinois, and three-fifths in Milwaukee.

With respect to burglary, the proportion of arrests among known cases ranges from one-twentieth to one-half, often about one-tenth. The proportion (1928) is approximately one-tenth in Los Angeles, one-sixth in Rochester, one-fourth in Cleveland, three-tenths in Baltimore, and eleven-twentieths in Buffalo and Detroit. The proportion of convictions among known cases is one-twentieth in St. Louis, and one-seventh in Baltimore. The proportion of convictions among arrests is one-third in Illinois, one-half in St. Louis and Baltimore, and nine-tenths in Milwaukee.

With respect to robbery, the proportion of arrests among known cases ranges from one-twentieth to one-half, often about one-tenth. The proportion (1928) is approximately one-fifth in Los Angeles, three-tenths in Cleveland, nine-twentieths in Buffalo, one-half in Detroit, and eleven-twentieths in Baltimore. The proportion of convictions among known cases is approximately one-twentieth in St. Louis, and one-fifth in Baltimore. The proportion of convictions among arrests is approximately three-tenths in Illinois, one-third in Baltimore, two-fifths in St. Louis, and three-fourths in Milwaukee.

With respect to larceny, the proportion of arrests among known cases ranges from one-tenth or less to one-half. The proportion (1928) is approximately one-twentieth in Los Angeles and Rochester, one-fourth in Detroit, one-third in Baltimore and Cleveland, and two-thirds in Buffalo. The proportion of convictions among known cases is one-ninth in Baltimore. The proportion of convictions among arrests is one-fifth in Illinois, two-

fifths in St. Louis, nine-twentieths in Baltimore, and seven-tenths in Milwaukee.

Of cases of burglary, robbery, and larceny taken together in Philadelphia, two-fifths have arrest, and one-tenth conviction.

Among known cases of automobile theft the proportion of arrests is often from one-twelfth to three-tenths. It is (1928) one-twentieth in Detroit, one-tenth in Cleveland and Rochester, and one-sixth in Buffalo. (Of automobiles stolen in general from three-fourths to nine-tenths are recovered, though in some places the proportion may be as low as one-third.) Of the theft of automobiles in Chicago 3 per cent result in a trial. Of big mail robberies, in which the United States Government is concerned, over five-sixths result in conviction.

In respect to embezzlement, the proportion of arrests among known cases is one-sixth in St. Louis, and three-fourths in Baltimore. The proportion of convictions among known cases is one-twentieth in St. Louis, and one-fourth in Baltimore. The proportion of convictions among arrests is three-tenths in St. Louis, and two-fifths in Baltimore. The proportion of convictions among arrests for embezzlement and fraud is one-twelfth in Illinois, and one-half in Milwaukee.

With respect to forgery, the proportion of arrests among known cases is approximately one-twelfth in St. Louis and three-fifths in Baltimore. The proportion of convictions among known cases is one-twenty-fifth in St. Louis and two-fifths in Baltimore. The proportion of convictions among arrests is three-tenths in Illinois, one-half in St. Louis and Baltimore, and nine-tenths in Milwaukee.

The respective proportions in Baltimore of arrests, of convictions, and of convictions among arrests for felonious entry is approximately one-half, one-third, and three-eighths; for possession of stolen property, practically 100 per cent, one-third, and one-third; for fraud, three-fourths, two-thirds, and one-half; and for false pretenses, one-half, one-sixth, and one-third.

In arrests with respect to carrying concealed weapons the proportion of convictions in Illinois among arrests is one-fourteenth.

With respect to arson the proportion of arrests in Baltimore is three-fourths, and the proportion of convictions is one-sixth; the proportion of convictions among arrests is one-fourth. With respect to perjury the proportion of arrests is practically 100 per cent; the proportion of convictions is about one-third; the proportion of convictions among arrests is about one-third. In New York City the proportion of convictions among arrests is one-

seventh. In most communities there are relatively few arrests for perjury.

Offenses on the order of gambling seem to receive little in the way of penalization. In Philadelphia less than 3 per cent of such offenses have indictment, and less than 1 per cent conviction.

Finally, there are divers forms of doings contrary to the law, which, according to common belief, have relatively scant punishment or even official detection. These include false returns as to income, smuggling, automobile speeding, violation of child labor laws, violation of factory laws, violation of pure food laws, etc. Such offenses as violation of liquor and of drugs laws in some communities are penalized to no great extent.

The disposal of particular offenses at various stages of criminal procedure in Chicago may be indicated in contrast approximately as follows: The proportion for all offenses at preliminary examination which are held for grand jury is three-fifths; for homicide, three-fifths; for rape, three-fifths; for sex offenses (not rape), two-thirds; for assault, three-fifths; for robbery, three-fourths; for burglary, three-fourths; for larceny, one-half; for forgery, seven-tenths; for embezzlement and fraud, one-third; for carrying concealed weapons, three-fifths; and for miscellaneous offenses, one-half. The proportion for all offenses at preliminary examination which have trial is two-fifths; for homicide, one-half; for rape, two-fifths; for sex offenses, one-half; for assault, one-half; for robbery, three-fifths; for burglary, two-thirds; for larceny, two-fifths; for forgery, two-thirds; for embezzlement and fraud, one-fourth; and for miscellaneous offenses, one-half. The proportion for all offenses at preliminary examination which have conviction is one-fifth; for homicide, one-sixth; for rape, one-sixth; for sex offenses, one-fourth; for assault, one-seventh; for robbery, three-tenths; for burglary, one-third; for larceny, one-fifth; for forgery, three-tenths; for embezzlement and fraud, one-twelfth; for carrying concealed weapons, one-fourteenth; and for miscellaneous offenses, one-twentieth. The proportion for all offenses at preliminary examination which have sentence executed is one-sixth; for homicide, one-seventh; for rape, one-eighth; for sex offenses, one-sixth; for assault, one-eighth; for robbery, one-fourth; for burglary, three-tenths; for larceny, one-eighth; for forgery, one-sixth; for embezzlement and fraud, one-twentieth; for carrying concealed weapons, one-fourteenth; and for miscellaneous offenses, one-thirtieth. The proportion for all offenses in grand jury action which have indictment is five-sixths; for homicide, nine-tenths;

for rape, seven-tenths; for sex offenses, four-sevenths; for assault, four-fifths; for robbery, three-fourths; for burglary, six-sevenths; for larceny, three-fourths; for forgery, nine-tenths; for embezzlement and fraud, five-sevenths; for carrying concealed weapons, all; and for miscellaneous offenses, eight-ninths. The proportion for all offenses tried which have conviction is one-half; for homicide, one-third; for rape, three-sevenths; for sex offenses, one-half; for assault, one-third; for robbery, eleven-twentieths; for burglary, five-ninths; for larceny, five-ninths; for forgery, one-half; for embezzlement and fraud, one-third; for carrying concealed weapons, one-eighth; and for miscellaneous offenses, eleven-twelfths. The proportion for all offenses in which conviction is followed by execution of sentence is three-fourths; for homicide, seven-eighths; for rape, three-fourths; for sex offenses, two-thirds; for assault, four-fifths; for robbery, seven-eighths; for burglary, three-fourths; for larceny, three-fifths; for forgery, three-fifths; for embezzlement and fraud, five-eighths; for carrying concealed weapons, all; and for miscellaneous offenses, two-thirds. Here the disposal of different forms of crime at the several stages of procedure varies in no small degree. Offenses at preliminary examination (or after arrest) most likely to have conviction appear to be burglary, robbery, forgery, and sex offenses. Offenses most likely to be held for grand jury action appear to be robbery, burglary, sex offenses, and forgery. Offenses most likely to be indicted by grand jury appear to be carrying concealed weapons, homicide, forgery, and burglary. Offenses most likely to have conviction upon trial appear to be burglary and robbery. Offenses most likely to have sentences executed after conviction are carrying concealed weapons, robbery, homicide, and assault.

The situation with regard to particular offenses in Milwaukee may also be shown approximately. The proportion for all offenses at preliminary hearing held for trial (without the intermediation of grand jury) is five-sixths; for homicide, nine-tenths; for rape, nine-tenths; for sex offenses (not rape), three-fourths; for assault, seven-eighths; for robbery, nineteen-twentieths; for burglary, nineteen-twentieths; for larceny, five-sixths; for forgery, nineteen-twentieths; for embezzlement and fraud, two-thirds; and for miscellaneous offenses, three-fourths. The proportion for all offenses at preliminary examination which have conviction is two-thirds; for homicide, two-fifths; for rape, two-thirds; for sex offenses, three-fifths; for assault, three-fifths; for robbery, three-fourths; for burglary, nine-tenths; for larceny,

seven-tenths; for forgery, nine-tenths; for embezzlement and fraud, one-half; and for miscellaneous offenses, one-half. The proportion for all offenses at preliminary examination which have sentence executed is one-third; for homicide, three-tenths; for rape, three-fifths; for sex offenses, one-half; for assault, one-half; for robbery, two-thirds; for burglary, one-half; for larceny, two-fifths; for forgery, one-half; for embezzlement and fraud, three-tenths; and for miscellaneous offenses, one-eighth. The proportion for all offenses tried which have conviction is seven-ninths; for homicide, seven-fifteenths; for rape, seven-ninths; for sex offenses, three-fourths; for assault, seven-tenths; for robbery, three-fourths; for burglary, nineteen-twentieths; for larceny, five-sixths; for forgery, nineteen-twentieths; for embezzlement and fraud, two-thirds; and for miscellaneous offenses, two-thirds. The proportion for all offenses in which execution of sentence follows upon conviction is four-sevenths; for homicide, three-fourths; for rape, five-sixths; for sex offenses, five-sixths; for assault, four-fifths; for robbery, eight-ninths; for burglary, one-half; for larceny, five-ninths; for forgery, five-ninths; for embezzlement and fraud, two-thirds; and for miscellaneous offenses, two-ninths. The offenses most likely to have conviction are burglary, forgery, larceny, and robbery. The offenses most likely to be held at preliminary examination for trial are robbery, forgery, burglary, homicide, rape, and assault. Conviction upon trial is most likely for burglary, forgery, larceny, sex offenses, rape, and assault. Execution of sentence is most likely with robbery, rape, sex offenses, assault, homicide, and embezzlement and fraud.

The method of elimination of particular offenses at different stages of criminal procedure in New York State (1925) may be indicated approximately as follows: For all offenses the proportion eliminated at preliminary hearing is eleven-twentieths; for homicide, two-thirds; for sex offenses, one-half; for assault, three-fourths; for robbery, nine-twentieths; for grand larceny, eleven-twentieths; for burglary, two-fifths; for fraud and forgery, two-fifths; for carrying concealed weapons, nine-twentieths; and for miscellaneous offenses, three-fifths. For all offenses the proportion eliminated by grand jury action is one-eighth; for homicide, one-sixth; for sex offenses, one-sixth; for assault, one-twelfth; for robbery, one-fifteenth; for grand larceny, one-tenth; for burglary, one-twelfth; for fraud and forgery, one-tenth; for carrying concealed weapons, one-twentieth; and for miscellaneous offenses, one-fourth. For all offenses the proportion

eliminated at trial court is one-twelfth; for homicide, one-tenth; for sex offenses, one-twelfth; for assault, one-fifteenth; for robbery, one-eighth; for grand larceny, one-tenth; for burglary, one-tenth; for fraud and forgery, one-twelfth; for carrying concealed weapons, one-tenth; and for miscellaneous offenses, one-twentieth. For all offenses the proportion having punishment is one-sixth; for homicide, one-eighteenth; for sex offenses, one-sixth; for assault, one-tenth; for robbery, one-third; for grand larceny, one-sixth; for burglary, three-tenths; for fraud and forgery, one-fourth; for carrying concealed weapons, one-third; and for miscellaneous offenses, one-eighteenth. Offenses most likely to be held for grand jury action are burglary, fraud and forgery, robbery, and carrying concealed weapons; most likely to be indicted, carrying concealed weapons, robbery, burglary, assault, and fraud and forgery; most likely to have conviction upon trial, assault, fraud and forgery, and sex offenses; and most likely to have punishment, robbery, carrying concealed weapons, burglary, fraud and forgery, grand larceny, and sex offenses.

In Cincinnati the respective proportions in criminal procedure eliminated at preliminary examination are, approximately, as follows: carrying concealed weapons, practically all; forgery, two-thirds; larceny, one-half; assault, one-half; homicide, one-third; robbery, three-tenths; and burglary, one-fourth. The proportions eliminated by grand jury are: homicide, one-fifth; assault, one-fifth; forgery, one-sixth; robbery, one-sixth; larceny, one-eighth; and burglary, one-ninth. The proportions eliminated by unsuccessful prosecution are: robbery, one-seventh; larceny, one-tenth; homicide, one-eleventh; burglary, one-twelfth; assault, one-sixteenth; and forgery, one-twenty-fifth. Offenses most likely to be passed on to the grand jury and from it to the trial court are those against property for gain.

Of arraignments in New York State (1926) the order in which guilt is found with respect to the several crimes (with the proportion for each) is as follows: murder, three-fifths; forgery and fraud, nine-twentieths; carrying concealed weapons, one-third; robbery, three-tenths; burglary, three-tenths; sex offenses, one-fifth; miscellaneous offenses, one-fifth; grand larceny, one-sixth; assault, one-twentieth; manslaughter, one-twentieth (total one-sixth).

In Georgia the offenses most likely to have punishment are burglary, forgery, larceny, and robbery; those least likely are murder and assault.

In general, as between offenses against the person and those against property for gain, the former are the more likely to have arrest, but the latter are the more likely to have conviction after arrest. Arrest is much more often to be expected with respect to offenses against property for gain which are not attended with violence (as fraud, embezzlement, possession of stolen property, etc.) than with respect to offenses against property which are so attended. Burglary appears the most difficult offense to be caught up with, followed by robbery and larceny. Penalization after apprehension is the more frequent in the case of offenses against property for gain, whether or not accompanied with violence. When once within the grip of the law, such offenses stand relatively good chances of punishment; at practically all stages of prosecution such cases are in considerable measure advanced in that direction. There is also a definite movement towards conviction, and after it execution of sentence, with respect to some offenses against the person, especially sex offenses—but in less degree with respect to assault, and in still less degree with respect to homicide.

So far as appears from conditions in Baltimore, dismissal of criminal cases by magistrates is more frequent in the case of offenses against property than in the case of offenses against the person, excepting manslaughter, and more frequent in the case of non-violent offenses against property than in the case of violent offenses. The proportion (about one-fifth for all) is over one-half for manslaughter, approximately one-third for embezzlement, three-tenths for fraud, one-fourth for robbery, larceny, felonious entry, and false pretenses, one-fifth for possession of stolen property and perjury, one-seventh for rape, and one-eighth for burglary; for other offenses it is much below the average, for murder being only 1 or 2 per cent. Dismissal by grand jury is relatively seldom for crimes against property, especially when accompanied with violence. The proportion (one-thirteenth for all) is approximately one-sixth for perjury, one-eighth for receiving stolen goods and rape, one-tenth for fraud, and one-twelfth for assault. Dropping by "nol-prossing" (or "stetting") is comparatively rare when there are involved violent crimes against property. The proportion (one-seventeenth for all) is one-sixth for false pretenses, one-seventh for possession of stolen property, one-tenth for perjury, fraud, and embezzlement, and one-twelfth for assault and rape. As respects the rendering of a verdict of guilty or not guilty on the trial, the former is much more likely in the case of crimes against property for

gain, whether or not attended by violence. In the case of arson and in the case of assault there appears an even greater chance of acquittal—with the former slightly more frequent, and with the latter about two times as frequent, as with the opposite verdict. The relative frequency of a verdict of guilty over a verdict of not guilty (about five times for all offenses) is approximately one and a half times for perjury, two times for robbery, possession of stolen property, and rape, three times for murder, four times for fraud, five times for felonious entry, six times for larceny, seven times for burglary, embezzlement, and false pretenses, and seventeen times for forgery. After a judgment of guilty probation is afforded the more often in the case of offenses against property which are not attended by violence.

In general it is the offender against property for gain, especially the professional criminal, who is the more likely to plead guilty, whether to the original offense or to one of lower degree. (In some part this is no doubt due to the circumstance that the professional criminal has his record against him.)

Pleas of guilty are in general offered the more frequently with respect to offenses against property than with respect to offenses against the person.

In the following table is presented the percentage distribution (approximate) of felony cases according to the method of elimination (together with those eliminated after the establishment of guilt, and those punished) in a given year in Illinois, Missouri, New York State, New York City, Baltimore, Cleveland, Cincinnati, Chicago, Milwaukee, and four cities in Pennsylvania.

PERCENTAGE DISTRIBUTION OF FELONY CASES ACCORDING TO METHOD OF ELIMINATION IN CERTAIN STATES AND CITIES

METHOD OF ELIMINATION	PER CENT DISTRIBUTION									
	Illinois 1926	Missouri 1924	N. Y. State 1926	N. Y. City 1925	Baltimore 1927	Cleveland 1927	Cincinnati 1926	Chicago 1926	Milwaukee 1926	Pennsylvania 1927
Arrests for felony..	100	100	100	100	100	100	100	100	100	100
Eliminated at preliminary hearing..	43	26	53	58	22	26	55	49	17	74
Eliminated by grand jury	12	3	10	12	5	12	12	11	—	3
Eliminated by trial jury	24	33	19	8	14	9	8	20	19	11
Guilt established...	21	38	18	22	59	53	25	20	64	12
Eliminated after establishment of guilt	5	6	6	5	8	—	7	5	28	4
Punished	16	32	12	17	51	—	18	15	36	8

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In the following table is given the percentage distribution, according to method of elimination, for felony cases in Illinois (1926).

PERCENTAGE DISTRIBUTION OF FELONY CASES ACCORDING TO METHOD OF ELIMINATION FOR DIFFERENT OFFENSES IN ILLINOIS.

Method of Elimination	PER CENT DISTRIBUTION												
	Total	Homicide	Rape	Robbery	Assault	Burglary	Forgery	Embezzlement and Fraud	Larceny	Carrying Concealed Weapons	Sex Offenses	Violation of Liquor Laws	Miscellaneous
Eliminated at preliminary hearing	43.7	41.2	41.1	22.9	42.3	25.4	30.3	64.1	52.7	40.0	34.0	—	46.1
Eliminated by grand jury ..	12.1	5.4	18.4	18.8	12.3	10.3	7.0	10.4	11.0	—	17.4	—	6.2
Eliminated by trial court...	23.6	36.0	23.3	26.8	30.6	26.9	33.7	17.5	16.6	53.3	24.3	50.0	44.3
Guilt established	20.6	17.4	17.2	31.5	14.8	37.4	29.0	8.0	19.5	6.7	24.3	50.0	3.4
Probation, etc...	4.8	—	3.7	3.0	2.6	9.1	12.2	3.3	7.1	—	6.9	—	1.0
New trial and appeal	—	2.0	1.0	1.0	—	—	—	—	—	—	1.0	—	—
Sentence executed	15.4	15.2	12.5	27.5	12.2	28.3	16.8	4.7	12.4	6.7	16.4	50.0	2.4

In the following table is given the percentage according to method of disposal for felony cases in Baltimore (1923-1927).

PERCENTAGE OF FELONY CASES ACCORDING TO METHOD OF DISPOSITION IN BALTIMORE

Offense	Per cent of cases reported which are arrested	Per cent of arrests which are disposed of in juvenile court	Per cent of arrests which are dismissed by magistrate	Per cent of arrests which are dismissed by grand jury	Per cent of arrests which are indicted by grand jury	Per cent of indictments which are nolle or stetted	Per cent of indictments which result in not guilty on trial	Per cent of indictments which result in guilty on trial	Per cent of arrests which are pending indictment or trial	Per cent of guilty on suspended sentence or parole (probation)	Per cent of cases of guilty which are awaiting sentence
Arson	74.2	4.3	13.0	13.0	69.6	0.0	31.3	37.5	21.7	0.0	0.0
Assault (aggravated)	86.5	0.3	6.4	8.1	59.8	7.9	19.7	10.4	7.1	5.3	0.2
Burglary	23.8	7.7	13.4	4.6	69.9	3.6	11.2	80.9	7.0	9.2	0.5
Carnal Knowledge..	93.8	1.0	18.2	17.0	63.5	6.0	22.4	57.5	9.0	31.2	1.3
Embezzlement	79.3	0.0	35.8	6.3	54.9	9.5	8.6	60.5	15.6	45.4	0.0
False Pretenses (\$50.00)	53.5	0.2	26.1	6.8	65.6	17.2	7.2	55.7	14.4	22.8	0.0
Felonious Entry ...	48.0	15.7	24.0	6.9	50.4	2.2	13.2	74.9	7.7	2.2	0.0
Forgery	60.0	0.0	5.0	5.9	88.3	1.9	4.7	78.3	14.2	28.9	0.0
Fraud	74.3	0.0	28.4	9.9	59.9	11.3	17.4	68.9	6.2	33.3	0.0
Incest	92.9	0.0	7.7	23.1	69.3	0.0	11.1	77.7	7.7	0.0	0.0
Larceny (\$50.00) ..	27.1	4.1	27.2	7.0	57.5	3.3	12.8	74.4	8.8	18.7	0.9
Manslaughter	80.0	0.0	56.6	5.5	35.4	1.9	44.2	29.0	11.6	13.3	0.0
Mayhem	100.0	0.0	0.0	0.0	100.0	0.0	20.0	40.0	40.0	0.0	0.0
Murder	81.4	0.0	1.5	4.9	85.9	1.6	18.1	59.8	22.3	1.9	1.0
Perjury	97.0	0.0	19.4	16.1	64.5	10.0	30.0	45.0	9.7	22.2	0.0
Rape	90.0	0.5	14.5	11.6	71.0	6.8	31.3	60.5	9.1	14.7	0.0
Receiving Stolen Goods (\$50.00)..	98.5	0.4	18.3	13.0	66.4	13.8	26.5	51.7	7.3	23.3	1.1
Robbery	51.6	2.2	23.7	6.9	62.8	5.8	25.7	57.3	11.3	3.1	1.0
Total	38.8	2.7	19.3	7.1	62.4	5.8	15.6	75.9	9.3	12.7	0.5

CHAPTER XXIII

AMOUNT OF CRIME IN THE UNITED STATES

REASONS FOR INEXACT KNOWLEDGE UPON SUBJECT

The amount of crime in the United States, or the size of the criminal population, so far as it may be revealed by statistics, it is not possible at present to discover, or even to measure with any fair approximation. As we have seen, the number of imprisoned offenders has but limited reference to the extent of actual crime. It in no wise indicates the number of offenders who have been arrested and who have been let off without prosecution or have been prosecuted without conviction or sentence. Nor does it give any hint as to the number who have escaped detection or apprehension. Even if we had fuller information upon these points, we would still be far from having adequate definite knowledge as to the extent of crime. We would not be in position to estimate the influence upon the matter of such factors as the zeal and energy and efficiency on the part of police and prosecuting officers; the bearing of courts before whom offenders are brought; the use of non-institutional methods in the treatment of offenders, such as fining, probation, parole, indeterminate sentence, etc.—besides general social attitudes as to crime and law enforcement. There exists but slight well-founded statistical information in the United States with respect to such matters as the number of crimes reported to police or peace officers; the number of arrests; the number of cases dismissed or thrown out, whether by lower courts or by prosecuting officers; the number of cases held to the grand jury; the number indicted; the number brought to trial; the number convicted; and the number sentenced. Systematized record of the various stages in the prosecution of an offender, with the results at each stage, has hardly made beginning in American criminal procedure. There is also largely lacking account of the extent of probation, parole, and like matters, especially so far as aggregates and comparisons are concerned. In particular any representation as to the full after careers of offenders who have once had imprisonment is almost wholly wanting.

Even with what data upon the subject of crime are to be found, comparisons between conditions in different jurisdictions are very difficult. In most States not only are there the most meager statistics, but seldom are these kept in standardized form or upon a uniform basis. In addition, classification of crimes, with due descriptive language, and the organization of criminal prosecution are very different in different States. Few records vary more widely among the several States of the Union than do criminal records.

We can only be sure that whatever the number of offenders under sentence at a given time, this does not represent the full number, but only a restricted portion, of the criminal population, or of those who commit crimes. We can have no certain knowledge of the proportion which the one constitutes of the other. Any estimates made are bound to give too much or too little consideration to different factors; and there exist at present few means for checking them up.

From what has been said in the previous chapter it appears that of felonies committed in certain selected communities, there are, roughly approximated, only about one-tenth which receive punishment. However near the real situation this proportion may be, it can afford but limited conception of the actual or complete amount of such crimes. Some allowance must be made for the circumstance, of which we may be confident, that a certain portion of those who are charged with crime are innocent. A most serious qualification lies in the fact that many crimes are committed by the same offender—a matter to be offset in some degree by the further fact that there are occasions when several persons join to commit a single offense. A large portion, possibly the larger portion, of criminals are eventually, as has been pointed out, brought within the clutches of the law. But as yet we have little means either of knowing what proportion of apprehended offenders are guiltless, or of knowing what proportion of sentenced offenders commit more than one crime, and consequently of knowing what relation the number of accused offenders has to the total number of offenders.

NUMBER OF SENTENCED OFFENDERS

Almost the sole statistical source available which may in any way throw light upon or reflect conditions as to crime in the United States on the whole is that of the Census Bureau.¹ The

¹In 1930 police in the larger cities began collection of uniform monthly statistics on crime.

latest data with respect to inmates ¹ in and commitments to penal institutions in general (prisons and reformatories and jails and workhouses) and with respect to juvenile delinquents placed in special institutions are for the year 1923, together with figures for admissions to and discharges from prisons and reformatories in 1926.²

According to the figures for 1923, there are 109,619 sentenced prisoners confined in penal institutions of all kinds in the United States, or 997 per 1,000,000 of the general population. With the omission of those sentenced for nonpayment of fine, there are 104,067, or 946 per 1,000,000 of the general population. (In these figures are not included persons confined in military or naval prisons, nor in institutions for the insane and mentally defective. Nor are there included persons, especially females, in private correctional institutions or homes—9555 females being so reported.)

In addition, there are 27,238 persons (all ages) in special institutions for juvenile delinquents, with a ratio of 1246 per 1,000,000 of the general population (from ten to twenty years of age). If these be included with the number in regular penal institutions, the total number of persons under confinement is 136,857. There are, moreover, 6801 children, especially females, in private institutions or homes; and 636 in detention homes.³

In 1926-1927 there were reported 84,317 inmates in "industrial schools" of all kinds, both public and private—industrial schools, training schools, reform schools, parental schools, junior republics, protectories, Houses of the Good Shepherd, etc.⁴

The number of persons committed in 1923 to penal institutions

¹ The expression "inmate" in this connection is an undesirable one in certain respects, but it seems the only one of a single word available.

² The several reports in which these statistics are contained are as follows: (1) Prisoners: 1923, *Crime Conditions in the United States as Reflected in Census Statistics of Imprisoned Offenders, 1926*; (2) Children under Institutional Care: 1923, 1927; (3) The Prisoner's Antecedents, Statistics concerning the Previous Life of Offenders Committed in 1923 to State and Federal Prisons and Reformatories: Supplementary to "Prisoners: 1923," 1929; (4) Prisoners in State and Federal Prisons and Reformatories: 1926, *Statistics of Prisoners Received and Discharged during the Year, for State and Federal Penal Institutions, 1929*. The statistics presented in this and the following chapters are taken from one or other of these reports unless otherwise indicated.

³ It is to be understood that juvenile delinquents, though under restraint, are not regarded as in fact "offenders" or "criminals." See chapter on Procedure in Juvenile Court.

⁴ United States Bureau of Education, *Bulletin, 1928, No. 10 (Industrial Schools for Delinquents)*.

is 357,493, or 3251 per 1,000,000 of the general population. With the omission of those sentenced for nonpayment of fine, the number of commitments is 188,160, or a ratio of 1718.

The number of persons committed (or admitted) to special institutions for juvenile delinquents (1923) is 18,640 (under eighteen years of age), or a ratio of 1565 per 1,000,000 of the general population of like age. If these be included with the number committed to regular penal institutions, the total number of commitments is 376,133. (The actual number of committed persons in one year, however, is somewhat less, some persons being committed more than once.)

With respect to juvenile delinquency it has been found by the Federal Children's Bureau that for certain cities the ratio of juvenile court cases (1928) per 1000 of the general population of juvenile court age is approximately 12. The ratio between different cities ranges from less than 5 to more than 50. Figures as to juvenile delinquency, however, are very difficult to determine because of different procedure and standards in different courts, and especially because of the inclusion or non-inclusion of cases informally disposed of.¹

It is estimated that, besides imprisoned offenders, there are 500,000 persons fined or on probation or suspended sentence in the United States each year.² By probation authorities the number on probation is estimated to be about 250,000. It has also been guessed, without any official figures, that from one per cent to two per cent of the population of the United States make their living entirely or partly by crime, or are habitually engaged in criminal activities.³

In the table on page 138 is given for each geographic division and for each State of the United States the number of inmates in penal institutions of all kinds, together with the ratio per 1,000,000 of the general population, and the ratio of commitments to all such institutions, and to prisons and reformatories and to jails and workhouses separately, together with similar figures for juvenile delinquents with respect to special institutions (1923).

The actual criminality, or the prevalence of or tendency to crime, in a given State or other political area is not necessarily indicated by the size of its prison population. The matter is affected in varying degrees by a number of considerations: the

¹ From publications of Children's Bureau.

² American Year Book, 1927, p. 619.

³ On the number of persons in jails awaiting trial, see Chapter LII.

NUMBER AND RATIO OF PRISONERS IN GENERAL PENAL INSTITUTIONS AND OF JUVENILE
DELINQUENTS IN SPECIAL INSTITUTIONS BY STATES

STATE	General Penal Institutions					Institutions for Juvenile Delinquents		
	Inmates		Ratio of Commitments per 1,000,000 of General Population			Inmates		Ratio of Commitments per 1,000,000 of General Population
	Number	Ratio per 1,000,000 of General Population	Total	Prisons and Reformatories	Jails and Work-houses	Number	Ratio per 1,000,000 of General Population	
United States ...	104,067	946	3251	342	2909	27238	1246	1565
New England	5,746	750	2679	210	2469	2603	1922	2298
Maine	474	611	1786	260	1526	288	1972	1232
New Hampshire ...	222	497	1396	78	1318	167	2064	1233
Vermont	350	993	1728	786	942	207	3070	2048
Massachusetts	3,049	762	2977	173	2804	1229	1768	2133
Rhode Island	530	850	1262	91	1171	196	1702	6147
Connecticut	1,121	766	3560	237	3324	516	2066	2037
Middle Atlantic	20,150	870	3495	205	3290	6613	1569	1857
New York	10,462	971	4206	247	3958	3202	1696	2383
New Jersey	2,563	766	2521	246	2275	887	1487	1872
Pennsylvania	7,125	788	3008	139	2869	2524	1459	1292
East North Central...	19,281	858	4766	335	3131	4987	1215	1689
Ohio	5,052	833	4334	373	3961	1604	1505	2427
Indiana	2,563	919	2748	452	2296	832	1443	1391
Illinois	5,395	800	3236	206	3030	1200	967	1601
Michigan	4,536	1153	4178	507	3671	750	1103	1727
Wisconsin	1,541	566	1865	195	1670	601	1109	731
West North Central..	9,823	766	2403	314	2090	3228	1236	1135
Minnesota	2,065	832	3254	265	2989	738	1487	1828
Iowa	1,899	772	2521	306	2215	555	1146	891
Missouri	2,522	734	1883	265	1618	904	1293	998
North Dakota	335	501	1367	203	1164	160	1086	434
South Dakota	368	564	1127	283	844	94	684	516
Nebraska	907	683	3295	285	3011	336	1225	1118
Kansas	1,727	963	2252	558	1694	441	1184	1314
South Atlantic	15,703	1080	3490	276	3214	4241	1285	1808
Delaware	299	1303	3993	920	3073	153	3608	2644
Maryland	1,674	1118	6518	249	6269	912	3075	3199
District of Columbia	339	721	11378	—	11378	380	5275	8581
Virginia	2,388	1001	3236	255	2982	542	1000	1182
West Virginia	1,960	1274	2397	502	1895	481	1453	1760
North Carolina	1,731	649	1022	138	885	544	858	753
South Carolina	1,167	672	2223	202	2020	477	1086	1102
Georgia	4,670	1565	3956	294	3662	403	553	2198
Florida	1,475	1425	4761	436	4325	349	1622	2710
East South Central...	9,648	1067	2059	327	1731	1465	866	1026
Kentucky	2,397	976	2983	337	2646	618	1128	1451
Tennessee	1,947	816	1947	251	1695	272	489	579
Alabama	3,537	1466	2120	438	1682	575	980	1053
Mississippi	1,767	987	857	267	590	—	—	—
West South Central..	8,935	836	2394	442	1951	1570	629	1108
Arkansas	1,514	838	2292	530	1762	205	471	1017
Louisiana	1,736	942	4507	303	4204	134	303	1475
Oklahoma	1,936	903	2067	798	1268	293	595	1562
Texas	3,749	765	1780	307	1473	938	833	794
Mountain	3,322	935	3586	473	3113	1144	1998	1959
Montana	393	653	2612	403	2208	182	1804	1074
Idaho	334	719	1528	256	1272	271	2946	2262
Wyoming	356	1700	2861	597	2264	59	1674	1031
Colorado	1,105	1124	6068	572	5496	483	2640	3027
New Mexico	261	704	1533	443	1090	42	510	1379
Arizona	418	1117	3893	553	3340	92	1362	1427
Utah	249	527	2546	393	2153	—	—	—
Nevada	206	2261	8604	969	7635	15	1283	462
Pacific	6,795	1134	5985	431	5554	1387	1473	1738
Washington	1,304	916	8055	527	7528	334	1364	2176
Oregon	574	702	3051	320	2730	193	1340	1455
California	4,917	1311	5840	419	5421	860	1556	1615
Federal	4,664	42	34	34	—	—	—	—

AMOUNT OF CRIME IN THE UNITED STATES

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NUMBER AND RATIO OF INMATES IN PRISONS AND REFORMATORIES BY STATES

State	Number			Ratio per 1,000,000 of General Population		
	1927	1926	1923	1927	1926	1923
United States	96,125	90,047	81,959	850	827	740
Federal prisons and reformatories	6,803	6,430	4,664	58	55	42
State prisons and reformatories	89,322	83,617	77,295	793	752	702
New England	4,164	3,979	3,638	—	—	—
Maine	412	451	379	521	572	487
New Hampshire	133	150	138	293	331	308
Vermont	388	346	316	1,101	982	897
Massachusetts	1,923	1,769	1,448	456	424	360
Rhode Island	388	315	466	555	459	720
Connecticut	920	948	891	568	597	602
Middle Atlantic	13,851	12,993	12,526	—	—	—
New York	7,298	6,820	6,316	642	607	584
New Jersey	2,383	2,213	1,912	641	608	565
Pennsylvania	4,170	3,960	4,298	431	415	472
East North Central	22,524	20,130	15,751	—	—	—
Ohio	6,209	5,398	4,234	933	826	691
Indiana	3,615	3,402	2,302	1,152	1,094	764
Illinois	6,038	5,287	4,416	833	740	649
Michigan	5,168	4,687	3,641	1,163	1,080	913
Wisconsin	1,494	1,356	1,158	515	473	422
West North Central	12,179	11,037	8,566	—	—	—
Minnesota	2,240	1,906	1,634	839	724	653
Iowa	2,044	2,018	1,794	843	834	743
Missouri	3,442	3,059	2,205	982	876	640
North Dakota	309	304	244	482	474	379
South Dakota	469	445	326	677	650	492
Nebraska	1,000	936	789	719	679	591
Kansas	2,675	2,369	1,574	1,467	1,304	877
South Atlantic	—	—	11,751	—	—	—
Delaware	—	—	—	—	—	—
Maryland	1,921	1,886	1,483	1,209	1,201	984
District of Columbia	—	—	—	—	—	—
Virginia	1,979	1,920	1,960	782	767	816
West Virginia	1,799	1,768	1,628	1,069	1,069	1,048
North Carolina	1,579	1,490	1,046	549	526	389
South Carolina	504	528	528	275	291	302
Georgia	2,945	3,007	3,738	933	964	1,245
Florida	—	—	1,368	—	—	1,199
East South Central	—	—	8,498	—	—	—
Kentucky	2,248	2,170	2,079	888	862	844
Tennessee	2,023	1,916	1,630	817	779	681
Alabama	—	—	3,169	—	—	1,306
Mississippi	1,563	1,471	1,620	873	822	905
West South Central	8,947	8,933	8,379	—	—	—
Arkansas	1,383	1,449	1,410	723	766	775
Louisiana	1,686	1,575	1,593	875	825	861
Oklahoma	2,677	2,513	1,799	1,133	1,084	831
Texas	3,201	3,396	3,577	588	645	723
Mountain	—	—	2,933	—	—	—
Montana	437	—	331	620	614	540
Idaho	—	420	284	—	—	603
Wyoming	264	282	335	1,109	1,210	1,573
Colorado	1,129	1,185	1,015	1,059	1,129	1,023
New Mexico	358	353	239	918	915	641
Arizona	444	473	355	982	1,085	929
Utah	210	206	200	405	405	418
Nevada	232	203	174	2,997	2,625	2,248
Pacific	8,022	7,267	5,253	—	—	—
Washington	1,552	1,504	1,010	1,001	987	703
Oregon	572	478	406	647	549	492
California	5,898	5,285	3,837	1,348	1,244	1,005

proportion of commitments among all convictions; the extent of the use of probation, or of the suspended sentence; the length of the sentence imposed; the extent of the use of the indeterminate sentence; the extent of the use of parole; the extent of imprisonment for nonpayment of fine; and like general penal methods—together with the nature and effectiveness of the machinery of law enforcement, or customary activity and efficiency in apprehension and prosecution of offenders, current or established social attitudes and policies towards different forms of crime, etc. In a slight degree the number of prisoners in a particular State may depend upon the number of Federal prisoners confined in its penal institutions.

The ratio of juvenile delinquents in special institutions in different sections depends in large measure upon the existence of special institutions for this type of offender, some areas being more fully supplied with institutions than others. Additional factors are age limits for commitment to special institutions; extent to which resort is made to general penal institutions; and the stage of the development of the juvenile court and of probation.

In the table on page 139 is given the number of inmates in prisons and reformatories in the several States of the United States, together with the ratio per 1,000,000 of the general population in 1923, 1926, and 1927.

Apart from the considerations already mentioned, the ratios for different States are affected in greater or less degree by their several policies in the distribution of prisoners between State and local institutions, the present figures having relation only to State institutions.

CHARACTER OF OFFENSES COMMITTED

In the table on pages 141 and 142 is given the percentage distribution of inmates in general penal institutions (prisons and reformatories and jails and workhouses) and of commitments thereto, according to nature of offense, together with the ratio of the latter to the former, or the number of commitments per 100 inmates (1923).¹

Of all such inmates, almost one-half (48.2 per cent) are charged with offenses against property for gain; one-fifth (20.1 per cent), with offenses against the person (including homicide);

¹It is to be noted that the classification of crimes here presented is somewhat different from that already given.

PERCENTAGE DISTRIBUTION OF PRISONERS IN GENERAL PENAL INSTITUTIONS
BY OFFENSE

Offense	Per Cent Distribution		Com- mit- ments per 100 Inmates
	In- mates	Com- mit- ments	
Total	100.0	100.0	153
Against the person.....	20.1	4.9	37
Assault	5.4	3.5	100
Attempted suicide	—	—	—
Homicide, grave	7.7	0.3	7
Homicide, lesser	6.9	0.8	18
Kidnapping	—	—	—
Threat to do bodily harm.....	—	0.1	—
All other	—	—	—
Against property, gainful.....	48.2	14.8	47
Burglary	15.2	2.6	26
Counterfeiting	0.2	0.1	44
Embezzlement	0.6	0.3	68
Extortion	0.1	—	—
Forgery	4.4	1.2	42
Fraud	1.0	1.3	198
Larceny	16.0	7.7	73
Possession of stolen property.....	1.1	0.4	55
Robbery	8.5	1.1	19
Violation of revenue laws.....	—	0.1	—
All other	1.0	0.1	10
Against property, not gainful.....	1.1	1.2	164
Arson	0.5	0.1	23
Malicious mischief	0.2	0.2	184
Trespassing	0.1	0.8	—
Use of another's property.....	0.5	0.1	39
Again sex morality.....	7.7	3.6	71
Adultery	0.3	0.3	171
Bastardy	—	—	—
Bigamy and polygamy.....	0.4	0.1	44
Crime against nature.....	0.5	0.1	27
Fornication	0.6	0.8	215
Keeping house of ill fame	0.1	0.3	365
Obscenity	0.2	0.3	244
Prostitution	0.3	0.6	325
Rape	4.3	0.6	23
Securing and transporting women for immoral purposes	0.4	0.2	55
All other	0.6	0.2	48
Against administration of government.....	0.8	0.7	138
Bribery	—	—	—
Contempt of court.....	0.1	0.3	—
Escaping custody	0.4	0.2	67
False impersonation	0.1	0.1	—
Obstructing justice	—	—	—
Perjury	0.2	0.1	56
Resisting officer	—	0.1	—

PERCENTAGE DISTRIBUTION OF PRISONERS IN GENERAL PENAL INSTITUTIONS
BY OFFENSE—*Continued*

Offense	Per Cent Distribution		Com- mit- ments per 100 Inmates
	In- mates	Com- mit- ments	
Violation of election laws.....	—	—	—
Violation of immigration laws.....	0.1	—	—
Against public health and safety.....	5.0	9.8	297
Carrying concealed weapons.....	1.2	1.6	195
Illegal practice of profession.....	—	—	—
Injuries to common carriers.....	0.1	—	—
Nuisance	—	0.1	—
Unlawful discharge of weapon.....	—	—	—
Violation of city ordinances.....	0.2	2.8	2,822
Violation of drug laws.....	3.3	2.0	95
Violation of food laws.....	—	—	—
Violation of traffic laws.....	0.3	3.2	1,877
All other	—	0.1	—
Against sobriety and good order.....	7.3	48.2	1,008
Disorderly conduct	2.2	14.8	1,009
Drug addiction	0.3	0.4	205
Drunkenness	2.5	25.3	1,542
Vagrancy	2.3	7.8	519
Against public policy.....	5.6	12.5	337
Criminal anarchism or syndicalism.....	0.1	0.1	—
Cruelty to animals.....	—	0.1	—
Enticing of servant.....	—	—	—
Federal espionage law.....	—	0.1	—
Gambling	0.1	1.1	—
Non-observance of Sabbath.....	—	—	—
Profanity	—	0.1	—
Violation of contract.....	—	0.1	—
Violation of fish and game laws.....	—	0.1	—
Violation of liquor laws.....	5.4	11.0	309
All other	—	0.1	—
Against children and prisoner's family.....	1.1	1.4	204
Contributing to delinquency.....	0.3	0.3	152
Cruelty to wife or child.....	—	—	—
Nonsupport or neglect of family.....	0.8	1.0	198
Violation of education laws	—	0.1	—
All other	—	—	—
Unclassified and unknown.....	3.0	2.9	150
Delinquency, etc.	0.2	0.1	90
Habitual criminal	—	—	—
Quarantine (venereal)	0.1	0.1	—
Violation of labor laws.....	—	0.1	—
Violation of parole	0.2	0.2	162
Violation of U. S. postal laws	0.4	0.2	104
All other, specified	1.7	1.7	148
Unknown	0.5	0.6	189

7.7 per cent, with offenses against sex morality; 7.3 per cent, with offenses against sobriety and good order; 5.6 per cent, with offenses against public policy; 5.0 per cent, with offenses against public health or safety; 1.1 per cent, with offenses against property not for gain; 1.1 per cent, with offenses against children and prisoner's family; and 0.8 per cent, with offenses against administration of government (there being 3.0 per cent unclassified and unknown).

Of offenses against property for gain, larceny and burglary each constitute practically one-third. These two offenses, together with robbery and forgery, make up over nine-tenths of offenses of this class. The remainder is divided among possession of stolen property, fraud, embezzlement, counterfeiting, violation of revenue laws, extortion, etc.

Of offenses against the person, over two-thirds are homicide, graver homicide slightly exceeding lesser. Assault constitutes the bulk of the remainder, there being slight proportions for threat to do bodily harm, kidnapping, etc. (for commitments there being also attempted suicide).

Of offenses against sex morality, rape constitutes more than one-half. The remainder are distributed among fornication, crime against nature, bigamy and polygamy, securing and transporting women for immoral purposes, adultery, prostitution, obscenity, keeping house of ill fame, bastardy, etc.

Of offenses against sobriety and good order, drunkenness, vagrancy, and disorderly conduct each make up almost one-third. The balance is set down to drug addiction.

Of offenses against public policy, nearly all are violation of liquor laws. Those that are left are criminal anarchy or syndicalism, gambling, violation of Federal espionage laws, cruelty to animals, profanity, violation of game and fish laws, enticing of servant, nonobservance of Sabbath, violation of contract, etc.

Of offenses against public health and safety, over one-half are violation of drug laws, and about one-fourth carrying concealed weapons. The rest are violation of traffic laws, violation of city ordinances, injuries to common carriers, illegal practice of profession, nuisance, unlawful discharge of weapon, violation of food laws, etc.

Of offenses against property not for gain, arson and use of another's property each constitute almost one-half. The two other offenses of this class are malicious mischief and trespassing.

Of offenses against children and prisoner's family, the greater number are nonsupport or neglect of family. Those remaining

are contribution to delinquency, and cruelty to wife or child (for commitments there being also violation of education laws).

Of offenses against administration of government, one-half are escaping custody, and one-fourth perjury. The others are contempt of court, false impersonation, resisting officer, violation of immigration laws, bribery, malfeasance in office, obstructing justice, and violation of election laws.

Among unclassified offenses are delinquency, quarantine (venereal), violation of labor laws, violation of parole, violation of United States postal laws, being a habitual criminal, and certain other relatively unimportant offenses.

In the order of their relative occurrence, the following are the leading offenses responsible for the imprisonment of prisoners, each with a proportion of not less than 1.0 per cent: larceny (16.0), burglary (15.2), homicide (grave and lesser) (14.6), robbery (8.5), assault (5.4), violation of liquor laws (5.4), forgery (4.4), rape (4.3), violation of drug laws (3.3), drunkenness (2.5), vagrancy (2.3), disorderly conduct (2.2), carrying concealed weapons (1.2), possession of stolen property (1.1), and fraud (1.0).

Of all commitments to penal institutions, in one year (which, without reference to length of sentence, is the better measure), almost one-half (48.2 per cent) are for offenses against sobriety and good order. One-fourth (25.3 per cent) are for drunkenness, one-seventh (14.8 per cent) for disorderly conduct, and one-twelfth (7.8 per cent) for vagrancy. Practically one-seventh (14.8 per cent) are for offenses against property for gain, larceny having 7.7 per cent, with smaller proportions for burglary, fraud, forgery, robbery, etc. One-eighth (12.5 per cent) are for offenses against public policy, over one-tenth (11.0 per cent) being for violations of liquor laws. One-tenth (9.8 per cent) are for offenses against public health and safety—chiefly violation of traffic laws, city ordinances, and drug laws, and carrying concealed weapons. There are 4.9 per cent for offenses against the person, mostly assault, the remainder being homicide. There are 3.6 per cent for offenses against sex morality of one kind or another. There are 1.4 per cent for offenses against children and prisoner's family, nonsupport or neglect of family being the foremost offense. There are 1.2 per cent for offenses against property not for gain, trespassing being the chief offense. There are 0.7 per cent for offenses against administration of government, the leading single offense being contempt of court. (There are 2.9 per cent unclassified and unknown.)

The ratio of the number of commitments to the number of prison inmates—the number of the former per 100 of the latter—indicates the relative seriousness of different offenses. A high ratio for a given offense usually means that it is penalized by short-term imprisonment, while a low ratio usually means that it is penalized by long-term imprisonment.

Much the highest ratio is found for offenses against sobriety and good order, especially drunkenness, drug addiction, and vagrancy. The next highest ratios are for offenses against public policy, for offenses against public health and safety (violation of traffic laws having the highest ratio for any single offense), for offenses against children and prisoner's family, for offenses against property not for gain, for offenses against administration of government, for offenses against sex morality (certain specific offenses having relatively very high ratios), for offenses against property for gain, and for offenses against the person.

This gradation represents the increasing seriousness of different classes of offenses in the eyes of the law.

The possible extent of one form of crime may be indicated in certain measure by the number of homicides in the United States. The number per 1,000,000 of the general population in the registration area of the country (1927) is 87.¹

In the following table is given, for certain offenses, the number known to the police per 1,000,000 of the general population in certain cities (1928).²

RATIO OF OFFENSES IN CERTAIN CITIES

City	Total *	Ratio Per 1,000,000 of General Population				
		Homicide	Robbery	Burglary	Larceny	Automobile theft
Detroit	11,891	128	564	397	10,147	8,165
Cleveland	5,606	131	1,173	2,084	512	5,583
Baltimore	11,705	269	496	2,705	6,582	3,143
Buffalo	5,363	247	435	1,540	2,447	4,131
Rochester	9,430	82	131	2,084	5,158	2,645

* Automobile thefts not included.

A large part of the differences between the several cities is due to different methods of procedure and of measurement with respect to these offenses.

¹ Census Bureau, Mortality Statistics.

² *Annals of American Academy of Political and Social Science*, Nov., 1929.

PERCENTAGE DISTRIBUTION AND RATIO OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS
ACCORDING TO OFFENSE BY GEOGRAPHIC DIVISIONS

Offense	U. S.	New Eng- land	Mid- dle At- lantic	East North Central	West North Central	South At- lantic	East South Central	West South Central	Moun- tain	Pa- cific	Fed- eral Pris- ons
	Per Cent Distribution										
	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Drunkenness	26.1	55.7	24.9	24.9	33.6	21.4	19.1	9.8	21.4	34.9	—
Disorderly conduct .	15.2	2.9	22.7	21.0	3.9	21.3	8.9	15.2	4.8	4.7	—
Violation of liquor laws	11.3	7.2	3.6	12.6	14.6	13.0	21.3	14.4	20.6	11.1	6.8
Vagrancy	8.0	2.9	8.4	4.7	9.8	3.3	6.7	13.9	16.1	15.6	—
Larceny	7.9	6.9	6.1	8.5	9.3	7.9	10.5	11.0	9.2	6.1	6.1
Assault	3.6	3.5	3.6	3.8	2.4	6.4	3.8	3.6	2.9	1.6	0.4
Violation of traffic laws	3.3	1.9	2.3	5.7	2.0	2.1	1.0	1.4	1.2	7.1	—
Violation of city or- dinances	2.9	0.1	9.9	0.2	2.1	3.0	0.3	0.4	—	0.7	—
Burglary	2.6	2.7	2.5	2.0	2.5	2.7	2.9	4.1	3.4	2.4	3.5
Violation of drug laws	2.1	0.6	3.5	0.4	0.8	0.3	0.1	1.1	1.9	3.9	47.2
Carrying concealed weapons	1.6	0.7	1.4	1.6	1.2	2.6	3.4	2.1	1.1	0.8	—
Prostitution	1.5	2.4	0.8	1.3	1.5	2.7	1.4	2.1	1.0	1.1	—
Fraud	1.4	0.8	0.8	1.4	0.9	1.0	2.2	3.4	1.9	1.4	5.0
Forgery	1.2	0.4	0.5	1.1	2.6	0.7	1.5	1.9	2.9	1.5	4.8
Homicide	1.2	0.5	0.8	0.8	0.9	2.1	3.9	2.0	1.2	0.5	0.4
Gambling	1.2	0.1	0.2	0.4	1.1	1.9	4.0	4.3	0.6	0.8	—
Robbery	1.1	0.8	1.1	1.3	1.6	0.8	0.8	1.0	1.6	0.8	2.1
Malicious mischief and trespassing ..	1.1	0.8	1.0	1.2	0.5	1.6	2.2	1.4	0.4	0.4	0.2
Nonsupport or ne- glect of family...	1.1	3.0	0.9	1.8	1.3	0.4	0.2	0.4	1.5	0.3	—
Rape	0.7	0.9	0.6	0.7	0.9	0.5	0.4	0.4	1.1	0.7	0.2
All other classified offenses	5.0	5.1	4.3	4.7	6.5	4.3	5.5	6.1	5.3	3.7	23.3

Ratio per 1,000,000 of General Population											
Total.....	1468	1171	1492	1579	1115	1516	948	1174	1719	2847	16
Drunkenness	383	652	371	393	375	324	181	115	368	994	—
Disorderly conduct .	223	34	338	332	43	323	84	178	82	133	—
Violation of liquor laws	166	84	54	199	162	197	202	169	353	317	1
Vagrancy	117	34	125	74	109	49	63	164	276	445	—
Larceny	117	81	91	135	104	120	99	129	158	175	1
Assault	54	41	54	59	26	97	36	42	50	47	—
Violation of traffic laws	48	23	34	91	23	31	9	17	21	201	—
Violation of city or- dinances	42	1	147	3	23	46	3	4	—	20	—
Burglary	39	32	38	32	28	42	28	48	58	67	1
Violation of drug laws	31	7	52	7	9	5	1	13	32	111	8
Carrying concealed weapons	24	8	21	25	13	39	32	25	19	24	—
Prostitution	22	28	12	20	17	41	13	24	17	32	—
Fraud	20	9	12	22	10	15	21	40	33	39	1
Forgery	18	5	8	17	29	11	14	22	50	42	1
Homicide	18	6	13	12	11	32	37	23	21	14	—
Gambling	17	2	4	7	12	29	37	51	10	21	—
Robbery	16	9	17	21	18	11	8	12	28	23	—
Malicious mischief and trespassing ..	16	10	15	18	5	24	21	16	8	11	—
Nonsupport or ne- glect of family...	15	35	13	28	14	6	2	4	25	9	—
Rape	10	11	9	10	10	8	4	8	18	19	—
All other classified offenses	74	60	64	75	72	65	52	71	92	105	4

OFFENSES ACCORDING TO GEOGRAPHIC AREAS

In the table on page 146 are shown for each geographic division of the United States, according to offense, the percentage distribution of commitments to general penal institutions and the ratio per 1,000,000 of the general population (1923).

So far as commitments are concerned, certain differences appear for different areas. Homicide, carrying concealed weapons, gambling, and malicious mischief and trespassing prevail on the whole more extensively in the south than in other parts of the country. Assault is especially frequent in the South Atlantic division. Offenses against property for gain are found in somewhat larger degree in general in the western part of the country than in the eastern. Vagrancy is distinctly more in evidence in the west. Nonsupport is noticeably frequent in the New England, East North Central, and Mountain divisions. Violation of drug laws appears to be most pronounced in the Pacific and Middle Atlantic divisions. Practically one-half of the commitments to Federal prisons are for violation of drug laws.

Comparisons between the rates for different kinds of crime in the several geographic divisions of the country are to be made with great caution. In some cases differences are apparent rather than real, much depending upon the terminology used, and upon the public policy as to different offenses. This is especially the case with respect to offenses like drunkenness, disorderly conduct, etc. The situation as to crime in the south is much influenced by the presence of a large Negro population, among which it is in general the more prevalent.

In the table on page 148 is shown for each State the ratio of male prisoners received in prisons and reformatories per 1,000,000 of the general population according to offense (1926).

RATIO OF MALE ADMISSIONS TO PRISONS AND REFORMATORIES ACCORDING TO OFFENSE
BY STATES

State	Ratio per 1,000,000 of General Population											
	Total	Homicide	Rape	Robbery	Assault	Burglary	Forgery	Larceny, Em- bezzlement, etc.	Sex Offenses except Rape	Violation of Liquor Laws	Other Reported	Not Reported
United States	767	45	30	68	38	134	50	215	21	61	101	5
Federal prisons and reformatories	84	1	—	2	—	2	3	22	4	14	35	1
State prisons and re- formatories	684	45	30	67	38	134	47	193	17	46	63	3
New England:												
Maine	398	10	20	15	43	158	28	85	18	—	20	3
New Hampshire ...	145	9	18	9	4	48	—	48	—	—	9	—
Vermont	1403	6	62	17	50	246	67	257	95	347	246	11
Massachusetts	332	10	25	56	10	83	7	93	8	—	37	1
Rhode Island	267	23	18	26	50	91	3	15	9	—	29	3
Connecticut	393	7	37	38	28	101	5	109	10	9	44	4
Middle Atlantic:												
New York	514	27	25	98	42	126	19	133	12	—	31	1
New Jersey	578	31	40	69	61	147	15	125	33	1	54	2
Pennsylvania	302	30	21	40	15	86	8	83	8	1	8	1
East North Central:												
Ohio	791	46	22	99	40	203	51	207	12	23	83	7
Indiana	853	38	21	64	27	123	55	324	5	64	120	12
Illinois	464	32	28	87	9	98	25	169	6	1	7	2
Michigan	1316	51	66	151	54	170	61	293	33	232	204	1
Wisconsin	500	11	50	28	13	106	54	122	42	11	61	3
West North Central:												
Minnesota	575	14	51	41	18	64	86	200	13	9	77	—
Iowa	496	15	20	25	19	85	45	174	22	10	81	2
Missouri	899	46	27	126	34	181	76	269	12	88	34	4
North Dakota	614	21	44	36	15	89	24	255	24	62	44	—
South Dakota	792	25	66	22	19	107	58	373	41	47	36	—
Nebraska	637	26	26	63	7	143	118	193	4	15	33	7
Kansas	902	29	34	68	16	145	109	387	14	47	52	—
South Atlantic:												
Delaware	—	—	—	—	—	—	—	—	—	—	—	—
Maryland	2223	69	39	83	400	221	44	455	59	83	767	3
Dist. of Columbia..	—	—	—	—	—	—	—	—	—	—	—	—
Virginia	636	83	27	30	56	189	34	109	14	86	9	1
West Virginia	946	84	31	20	67	159	80	192	15	256	37	6
North Carolina	385	78	10	14	18	19	21	200	14	10	2	—
South Carolina	280	32	10	3	24	47	8	53	3	80	14	5
Georgia	—	—	—	—	—	—	—	—	—	—	—	—
Florida	—	—	—	—	—	—	—	—	—	—	—	—
East South Central:												
Kentucky	1023	146	27	68	69	225	71	281	10	41	58	27
Tennessee	204	32	7	8	17	21	8	90	4	12	3	1
Alabama	—	—	—	—	—	—	—	—	—	—	—	—
Mississippi	699	165	8	11	50	114	40	137	9	135	19	11
West South Central:												
Arkansas	968	122	23	29	41	114	56	250	10	308	14	1
Louisiana	767	122	18	56	63	201	50	222	18	—	13	3
Oklahoma	1322	95	43	84	52	210	161	553	29	17	75	2
Texas	—	—	—	—	—	—	—	—	—	—	—	—
Mountain:												
Montana	714	34	50	39	32	158	55	224	13	45	50	13
Idaho	—	—	—	—	—	—	—	—	—	—	—	—
Wyoming	568	22	67	37	22	82	90	202	22	—	22	—
Colorado	1401	41	81	90	38	261	171	342	13	317	32	14
New Mexico	—	—	—	—	—	—	—	—	—	—	—	—
Arizona	1032	106	29	41	57	372	127	209	37	—	49	4
Utah	577	19	41	41	15	121	68	155	64	53	—	—
Nevada	2660	389	43	65	260	519	130	454	130	43	627	—
Pacific:												
Washington	970	18	26	40	31	202	125	326	53	62	84	2
Oregon	699	17	66	94	19	45	62	208	21	146	19	—
California	790	40	25	108	24	178	90	159	31	—	135	—

CHAPTER XXIV

COSTS OF CRIME

COSTS OF POLICE AND PENAL INSTITUTIONS FOR STATES AND CITIES

The financial cost of crime in the United States it is quite impossible at present to ascertain. Data are too meager and too uncertain to admit of anything like a definite or complete computation. All that is possible now is limited estimates.

The fullest and the most accurate figures in our possession at this time upon the subject are those relating to the costs of police and of penal (correctional) institutions in the different States and in the larger cities (of over 30,000 population) (there being no analogous figures as yet for counties), as given in the annual reports of the Census Bureau upon the subject.¹ For States (1927) the cost of police is \$7,426,458; of pardon and parole boards and officers, \$779,743; and of courts (in part civil), \$29,368,767. The cost of the maintenance of correctional institutions (including penal institutions as well) is as follows: adult (State), \$38,338,100; adult (other), \$544,131; juvenile (State), \$13,987,685; juvenile (other), \$572,610—or \$53,442,526 in all. The cost of all these items (not including prohibition enforcement) is \$91,017,494. The property value of correctional institutions is (with cost of additions) \$206,576,636. According to the report of the Census Bureau on Prisoners in State and Federal Prisons and Reformatories (1926), the cost of maintenance of prisons and reformatories (in all but 3 States) is \$24,728,859; and of additions and improvements, \$7,305,867. In the report on Prisoners (1923) the expenditures for prisons and reformatories (59 institutions) is \$20,224,610; and their property valuation, \$65,369,736.

For cities (1927) the cost of police departments (including pensions) is \$197,204,159; of probation boards and officers, \$2,191,990; of courts (in part civil) (including coroner), \$43,387,236. The cost of correctional institutions is as follows: adult, \$11,654,164; juvenile, \$4,251,432—or \$15,905,596. The total cost of all these items is \$258,688,981. The property value of police

¹ Financial Statistics of States; Financial Statistics of Cities.

departments (with cost of additions) is \$72,898,648, and of correctional institutions \$53,495,626 (1925).

In cities with a population of 30,000 and over the cost of police departments (not including correctional institutions) is \$4.32 per capita. (The amount becomes smaller with the decrease in the size of the city, being \$5.81 for cities with a population of over 500,000, and \$2.36 for cities of from 30,000 to 50,000.) Such cities contain (1920) about one-third of the population of the country.

The expenditure for police departments (not including correctional institutions) of cities with a population of 30,000 and over represents a little over one-tenth (10.5 per cent) of their total expenses (1927). This proportion is surpassed only by that for education.

Expenditures for all purposes in industrial schools of all kinds for juvenile delinquents in 1926-1927 were \$22,303,966. The value of their property was \$72,557,607. Private benefactions amounted to \$975,436.¹

In Missouri (1924) it is calculated that the annual cost to the State for penal institutions, courts, and officers of the law is \$2,414,477, and the annual cost for police \$6,769,160—a total cost of \$9,183,637.² This State, both an agricultural and an industrial one, may be taken as a fairly typical American Commonwealth. It contains (1920) 3.2 per cent of the total population of the country. On the basis of costs in it, the total costs in the United States for like purposes would amount to the sum of \$286,988,656.

ESTIMATES AS TO GENERAL COSTS OF CRIME

Certain estimates, in general of rather speculative character, have been made of the total annual costs of crime in the United States. One is of at least \$10,000,000,000.³ To direct property losses is ascribed \$3,500,000,000; to indirect losses in connection with preventing, detecting, trying, and punishing, \$3,500,000,000; and to indirect economic losses, \$2,500,000,000. In addition, are costs of alarms, safety devices, insurance costs, etc. The costs of bribery (with looting of the public domain), bootlegging, arson, credit frauds, etc. are declared to be unknown.

¹ United States Bureau of Education, Bulletin, 1928, No. 10 (Industrial Schools for Delinquents).

² Missouri Association for Criminal Justice, Missouri Crime Survey, 1926.

³ *New York Times*, September 20, 1925.

Another estimate of the cost of crime is as follows: ¹

Losses through frauds	\$ 1,270,000,000
Fraudulent securities	500,000,000
Embezzlements	150,000,000
Forgeries	100,000,000
Worthless checks	120,000,000
Fraudulent bankruptcies	400,000,000
Property losses through burglary, robbery, etc.	1,160,000,000
Transportation thefts	500,000,000
Thefts from warehouses, etc.	525,000,000
Thefts from mails	10,000,000
Economic value of 12,500 murdered persons	125,000,000
Cost of law enforcement	4,000,000,000
Federal, State, and municipal police and prison budget	1,000,000,000
Cost of criminal justice and legal expenditure	3,000,000,000
Waste of crime:	6,503,000,000
2,000,000 crimes at \$1500 a year	3,000,000,000
500,000 policemen at \$1500 a year	750,000,000
Commercialized vice	628,000,000
Drug traffic	1,000,000,000
Liquor traffic	1,000,000,000
Economic value of 125,000 victims of liquor traffic....	125,000,000
Grand total	\$12,933,000,000

In this estimate are embraced certain duplications. In it are not included illegal gambling, graft, and bribery. The full property losses and costs of enforcement are declared to be understated. The possible cost of police protection and anti-criminal industries is given as \$6,000,000,000. The loss in criminal frauds is stated to be possibly \$2,000,000,000. The total costs may thus be not less than \$16,500,000,000. If the losses from graft, gambling, etc. are included, the full cost is possibly not less than \$20,000,000,000.

By the American Bankers Association the following estimates (with some duplications) have been made as to the costs of commercial crime in one year (1924): ²

Embezzlement	\$ 120,000,000
Credit frauds	400,000,000
Burglary, larceny, and petty thefts	250,000,000
Forgery	100,000,000
Seaport robberies and thefts from railroads	125,000,000
Stock frauds	1,700,000,000
Tax and insurance frauds	1,000,000,000
Arson	50,000,000
Miscellaneous	75,000,000
Total	\$3,820,000,000

¹ *Manufacturers' Record*, March, 1927.

² *Scientific Monthly*, May, 1927, p. 422.

Additional items prepared by some insurance companies are:

Banditry	\$ 50,000,000
Common thievery	150,000,000
Fraudulent bankruptcy and credit swindling	100,000,000
Stock and land frauds and confidence games	2,000,000,000
Political graft, bootlegging, etc.	Unknown

It is estimated that 100,000 automobiles are stolen each year in the United States, worth \$300,000,000. Practically three-fourths are recovered. In Chicago 3.5 per cent of all the automobiles in the city were stolen in 1926, representing property value of \$9,000,000.¹ From one-tenth to one-half of stolen articles seem in general to be recovered.

GENERAL SOCIAL LOSSES IN CRIME

Apart from the direct property loss involved in the commission of crime and from the costs of criminal administration and procedure, there is to be set down the loss to the community of the productive power of the criminal class. If one-half million more or less able-bodied males from fifteen to fifty years of age are engaged in criminal or anti-social activities, and if the earning power of each is regarded as \$1500 a year, then the total loss through such misdirected energy to the productive forces of the country is \$750,000,000. A much smaller loss, but one of not unlike kind, comes from the withdrawal from these forces of the standing army of the police, the guardians of the peace against the cohorts of crime.

But with all the monetary costs concerned, the whole story is not told of the price of crime. There are other charges which society has to pay for this untoward thing in its midst—sorrow and shame and degradation and misery and moral and spiritual wreckage beyond all reckoning; homes blighted; holy ties of family, of kindred, of friends wrenched and torn; hearts cut asunder; long and bitter agonies of soul; searing of conscience—or what is worse, its annihilation; idealism mocked and stricken down; the finer fruits of life and of civilization crushed under foot. Besides all other expenses, account must be taken of the cost of the attention and consideration which society is compelled to give for its own self-preservation in fighting crime, instead of for the promotion of its own welfare and progress.

¹ *Criminal Justice* (Chicago Crime Commission), Feb., 1927.

CHAPTER XXV

MOVEMENT OF CRIME

DIFFICULTIES IN MAKING COMPARISON OF EXTENT OF CRIME AT DIFFERENT TIMES

If it has been most difficult to measure, even approximately, the amount of crime in the United States, it is no less difficult to ascertain whether crime in general is increasing or decreasing at the present time. It is almost impossible to indicate from statistical evidence its movement over a definite period of time. This is largely because of the absence of sufficient accurate statistics to make reliable comparisons of the extent of crime at different periods.

The difficulties in the matter become the more pronounced because of changes from time to time in the definition of different crimes, a circumstance resulting in a larger or a smaller content in them or in a larger or a smaller number of offenders as to certain ones. New crimes are constantly being set down in the law books, largely in consequence of the complexity of modern methods of living; while at the same time particular forms of action or conduct receive less statutory attention than was once the case. In large cities possibly one-half of arrests are for offenses not regarded as such a quarter or a half of a century ago. Examples are traffic laws, anti-liquor laws, child labor laws, pure food laws, anti-trust laws, various social welfare laws, etc. At the same time there are changes in the severity of the punishment for different crimes.

There are also changes in the efficiency or thoroughness of public officials in the apprehension and conviction of offenders, or in the enforcement of the laws, something of great effect upon the entire question. Social attitudes toward particular criminal acts are subject to no small alteration with the course of the years. Sometimes the enactment of a certain law occasions considerable disaffection with a part of the population, with consequent greater or less disregard for it for a greater or less period.

A special factor to cause changes in the number of persons

imprisoned for crime, or in the size of the prison population, at different times lies in the increasing use of non-institutional methods of treating offenders, including probation, indeterminate sentence, parole, substituting of fining for imprisonment, etc.

COMPARISON OF PRISON POPULATION AT DIFFERENT YEARS

In the following table are given for the United States, and for the several geographic divisions, the ratio of inmates in general penal institutions—prisons and reformatories and jails and work-houses (exclusive of those sentenced for nonpayment of fine)—in the years 1880, 1900, 1910, and 1923, per 1,000,000 of the general population, and the ratio of commitments to such institutions in 1910 and 1923 (figures for years before 1880 being incomplete, unstandardized, and uncertain).¹

RATIO OF PRISONERS IN GENERAL PENAL INSTITUTIONS BY GEOGRAPHIC DIVISIONS AT DIFFERENT YEARS

Geographic Division	Ratio per 1,000,000 of General Population					
	Inmates				Commitments	
	1923	1910	1904	1880	1923	1910
United States	946	1079	990	987	3251	5217
Geographic divisions:						
New England	750	1480	1436	1189	2679	7724
Middle Atlantic	870	1148	1102	1316	3495	5745
East North Central ..	858	738	712	693	3466	4499
West North Central..	766	706	719	612	2403	4376
South Atlantic	1080	1223	962	908	3490	5364
East South Central ..	1067	1235	952	931	2059	4290
West South Central ..	836	958	950	1257	2394	3019
Mountain	935	1584	1426	1138	3586	8472
Pacific	1134	1396	1448	2134	5985	8078
Federal prisons	42	21	20	—	34	11

Since 1880 the ratio of the prison population to the general population of the country has apparently fluctuated considerably.

¹Statistics in this chapter are, unless otherwise indicated, taken from reports of the Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929. On the difficulties in the comparison of criminal statistics, see, in addition, L. N. Robinson, *History and Organization of Criminal Statistics in the United States*, 1911; E. H. Sutherland, *Criminology*, 1924; *Proceedings of American Statistical Association*, 1928, pp. 123, 128.

The ratio for 1923 (946 per 1,000,000) is the lowest of all, though not greatly lower than that for 1880 (987); it is materially lower than that for 1910 (1079). Between 1910 and 1923 there has been a noticeable reduction in the ratio of commitments to penal institutions, or from 5217 per 1,000,000 of general population to 3251—the latter ratio being practically only about three-fifths of the former.

From these figures it would seem that that part of the criminal population of the United States represented by sentenced prisoners is not increasing in relation to general population, and is quite possibly decreasing. This does not mean, however, that crime itself or the proportion of offenders is necessarily on the decline. It is entirely possible that the apparent decrease in the prison population is counterbalanced by the increase in the number of offenders who are subjected to the non-institutional forms of treatment already referred to.

Since 1910 there has been a decline in the ratio of inmates in penal institutions for all divisions except the North Central. The decrease has been most pronounced in the New England and the Mountain divisions. For the entire period some divisions show increased ratios, and others decreased, some changes being very considerable. The movement for different divisions is seldom uniform. In the ratios for commitments between 1910 and 1923 a decrease is found for all divisions, the New England and Mountain divisions again showing the greatest decrease. For Federal prisons there is a general increase both as to inmates and as to commitments. The movement in different sections of the country is doubtless in large measure attributable to the extent to which resort is being made to non-institutional methods of treatment of offenders. In some areas a high ratio for prisoners may be maintained because of increasing severity of sentences, with their consequent longer durations.

In the following table is given the ratio per 1,000,000 of the general population for inmates in prisons and reformatories and for prisoners received therein from courts in 1904, 1910, 1923, and 1927.

RATIO OF PRISONERS IN PRISONS AND REFORMATORIES AT DIFFERENT YEARS

Prison Population	Ratio per 1,000,000 of General Population				
	1927	1926	1923	1910	1904
Inmates	850	827	740	747	691
Received from courts....	—	418	346	323	336

Here there is revealed a steady increase in the ratio of inmates for the entire period in question, though the years 1910 and 1923 show little difference. The greatest increase is between 1923 and 1927. In the ratio of prisoners received from courts there is likewise a general increase in the period, this being greatest also between 1923 and 1926. To a greater or less extent the increase with respect to prisons and reformatories means simply the shifting of an enlarging number of prisoners from local to State institutions—besides the general effects of longer sentences.¹

In the criminal courts of Pennsylvania the ratio for offenses charged per 1,000,000 of general population was in 1875, 5127; in 1885, 4225; in 1895, 4512; in 1905, 4435; in 1915, 3821; and in 1924, 4835. The ratios for convictions were, respectively, 866, 777, 763, 698, 1901, and 2484.²

MOVEMENT AS TO DIFFERENT CRIMES

A little light may perhaps be thrown upon the question of the possible increase or decrease of crime by a consideration of the movement as to different offenses. In the table on page 157 is shown for 1910 and 1923 the percentage distribution of inmates of and commitments to penal institutions (including jails and work-houses) for the leading offenses, together with the ratio of commitments for each offense per 1,000,000 of the general population.

Between 1910 and 1923 there has been a decrease both in percentage and in ratio of drunkenness, disorderly conduct, vagrancy, assault, larceny, fraud, gambling, and malicious mischief and trespassing. For all of these the ratio has been greatly reduced, generally by one-half, occasionally by more. The percentage decrease for inmates has been most pronounced for drunkenness, disorderly conduct, vagrancy—all allied offenses—and malicious mischief and trespassing, the proportion for 1923 being only one-half or one-third of that for 1910. (To an extent

¹ An improved situation with regard to crime, in some part as the result of an organized movement to deal with it, is to be found in the circumstance that in Baltimore from 1923 to 1927 there has been a steady decrease in the number of crimes reported, or from 6486 to 4920; a steady increase in the number of arrests, or from 1696 to 2314; a steady increase in the number of indictments, or from 1051 to 1537; and a steady increase in the number of convictions, or from 551 to 1294. Reports of Baltimore Criminal Justice Commission.

² *Annals of American Academy of Political and Social Science*, May, 1926. On ratios of convictions in higher courts in certain States and of arrests in certain cities, see E. H. Sutherland, *Criminology*, 1924, pp. 40, 43, 46, 47.

PERCENTAGE DISTRIBUTION AND RATIO OF PRISONERS IN GENERAL PENAL INSTITUTIONS BY OFFENSE AT DIFFERENT YEARS

Offense	Per Cent Distribution				Ratio of Commitments per 1,000,000 of General Population	
	Inmates		Commitments			
	1923	1910	1923	1910	1923	1910
Total	100.0	100.0	100.0	100.0	3251	5217
Drunkenness	2.5	7.7	25.6	35.6	831	1859
Disorderly conduct	2.2	4.6	14.9	19.1	485	999
Violation of liquor laws.....	5.4	1.9	11.0	1.6	358	84
Vagrancy	2.3	5.4	7.8	10.4	255	540
Larceny	16.0	19.2	7.6	8.2	247	428
Assault	5.4	8.7	3.5	4.7	115	245
Violation of traffic laws.....	0.3	—	3.2	—	105	—
Violation of city ordinances...	0.2	0.3	2.8	1.1	92	55
Burglary	15.2	14.6	2.4	1.7	78	88
Violation of drug laws.....	3.3	0.1	2.0	0.1	65	3
Carrying concealed weapons..	1.2	1.1	1.6	1.3	51	70
Prostitution	0.9	0.7	1.4	1.3	47	66
Fraud	1.0	1.3	1.3	1.9	43	97
Forgery	4.4	2.8	1.1	0.4	37	22
Homicide	14.6	12.8	1.1	0.6	36	31
Gambling	0.1	0.7	1.1	1.4	37	75
Robbery	8.5	4.2	1.0	0.3	33	18
Malicious mischief and trespassing	0.2	0.4	1.0	2.1	34	109
Nonsupport or neglect of family	0.8	0.6	1.0	0.6	33	30
Rape	4.3	4.0	0.6	0.3	20	15
All other classified offenses...	8.4	7.4	4.8	5.1	156	265
Unclassified and unknown.....	3.0	1.5	2.9	2.2	96	117

an increase or a decrease in percentage for some offenses is in part but a reflection of an opposite movement for others.) In ratio there has been a decrease for burglary, carrying of concealed weapons, and prostitution. (With prostitution is included fornication.)

There has been an increase for violation of liquor laws, violation of drug laws, violation of city ordinances (including traffic laws), robbery, forgery, rape, homicide, and nonsupport of family. The increase for most of these offenses has been notable. The increase for violation of traffic laws has perhaps been the greatest of all, figures for 1910 being so small as to be negligible. The increase for violation of drug laws has been twenty-fold in ratio and in percentage as to commitments, and

thirty-fold in percentage as to prison inmates. The increase for violation of liquor laws has been seven-fold in percentage as to commitments, over four-fold in ratio, and almost three-fold in percentage as to inmates. Robbery according to all forms of measurement has doubled or tripled since 1910. In ratio and in percentage alike as to commitments violation of city ordinances is twice as frequent in 1923 as in 1910. The proportion of commitments for forgery is almost three times as great in the latter year as in the former.

Within the recent years covered by these figures, there seems to have been a decrease mainly with crimes of less serious character. The most significant increases have been with certain crimes against property for gain, possibly attended by violence; violation of drug and liquor laws; and violation of city ordinances. The increase as to drug and liquor laws is chiefly due to Federal legislation on the subject. The increase in violation of city ordinances is attributable mostly to the growing complexity of city life, including various traffic regulations. An increase for rape may partly be due to laws raising the age of consent.

In the table on page 159 is given for the main offenses the percentage distribution of male and female admissions to prisons and reformatories in 1910, 1923, and 1926, together with the ratio per 1,000,000 of the general population.

With males, there has been during this period in general both in percentage and in ratio a decrease for homicide, assault, and violation of postal laws; and an increase for nonsupport of family, robbery, fraud, possession of stolen property, violation of liquor laws, and carrying weapons. The decrease for assault and the increase for robbery and possession of stolen property are notable. There are increases on the whole in ratio for burglary, forgery, embezzlement, rape, and other sex offenses. There appears a decrease for violation of drug laws, and an increase for larceny, since 1923. On the whole there has been a decrease for violation of revenue laws. With females, there has probably been a decrease on the whole for assault, homicide, burglary, and larceny; and an increase for sex offenses, violation of liquor laws, and forgery. Though with violation of drug laws there has been a large increase since 1910, there appears to be a decrease since 1923.

The findings here (at least for males) rather bear out the previous findings—especially as to the increase of offenses against property for gain, whether or not they are attended with violence. New evidence is presented as to decrease with offenses

PERCENTAGE DISTRIBUTION AND RATIO OF ADMISSIONS TO PRISONS
AND REFORMATORIES BY OFFENSE AT DIFFERENT YEARS

Sex and Offense	Per Cent Distribution			Ratio per 1,000,000 General Population		
	1926	1923	1910	1926	1923	1910
Male	100.0	100.0	100.0	767	619	555
Homicide	5.9	9.1	9.7	45	57	54
Rape	3.9	4.3	4.1	30	26	23
Robbery	8.8	8.3	4.6	68	51	26
Assault	4.9	5.2	10.0	38	32	55
Burglary	17.5	17.9	22.9	134	111	127
Forgery	6.5	7.3	6.1	50	45	34
Embezzlement	1.2	1.4	1.1	9	9	6
Fraud	2.2	1.7	1.9	17	11	11
Possession of stolen property...	3.3	1.8	0.9	25	11	5
Larceny	21.3	19.0	25.5	164	118	141
Sex offenses, except rape.....	2.8	3.2	3.0	21	20	17
Violation of liquor laws.....	7.9	7.2	1.2	61	45	6
Violation of drug laws.....	4.3	5.7	0.1	33	35	—
Carrying weapons	0.9	0.7	0.6	7	4	3
Nonsupport or neglect of family	1.0	0.7	0.4	8	4	2
Violation of U. S. postal laws...	0.2	0.7	—	2	5	—
Violation of U. S. revenue laws.	0.2	0.1	0.4	1	1	2
Other	6.6	5.3	7.3	51	33	40
Not reported	0.6	0.4	0.2	5	3	1
Female	100.0	100.0	100.0	55	43	34
Homicide	5.9	9.4	7.8	3	4	3
Assault	3.9	2.5	6.8	2	1	2
Robbery	1.2	1.6	1.3	1	1	—
Burglary	1.9	1.8	3.1	1	1	1
Forgery	4.0	3.4	1.0	2	1	—
Larceny	10.6	12.4	24.2	6	5	8
Sex offenses	23.1	22.9	22.5	13	10	8
Violation of liquor laws.....	9.9	7.9	1.3	5	3	—
Violation of drug laws.....	5.1	7.0	0.1	3	3	—
Nonsupport or neglect of family	1.4	2.1	1.3	1	1	—
Other	29.5	26.1	28.8	16	11	10

against the person, and as to increase for nonsupport of family and violation of liquor laws.

To some extent the movement of different crimes represents merely a changing policy as to the use of State penal institutions instead of local ones. Increases for certain offenses are to be attributed in some part to a tendency to impose longer sentences for them. For increase or decrease with some offenses the general attitude towards law enforcement is more or less responsible.

In the following table is given the percentage distribution and

the ratio per 1,000,000 of general population for convictions for different offenses in the criminal courts of Pennsylvania in 1875 and 1924.¹

PERCENTAGE DISTRIBUTION AND RATIO OF CONVICTIONS FOR DIFFERENT OFFENSES IN CRIMINAL COURTS IN PENNSYLVANIA AT DIFFERENT YEARS

Offense	Per Cent Distribution		Ratio per 1,000,000 of General Population	
	1875	1924	1875	1924
Against the person	26.5	11.0	229	272
Against property for gain.....	37.5	28.6	325	711
Against property not for gain	3.2	0.1	28	2
Against public policy	8.1	30.9	70	769
Against public health and safety..	1.2	9.4	11	233
Against sobriety and good order..	8.0	3.3	69	83
Against one's family and children	2.0	1.7	17	41
As to sex.....	9.2	7.7	80	191
Against government	1.8	2.1	15	52
Miscellaneous	2.5	5.2	22	130

Further possible indication of the movement of special forms of crime is to be found in the ratio of homicides to the general population over a given period of time. In the registration area of the United States the number of homicides (not including suicides or violent deaths) per 1,000,000 of the general population was from 1901 to 1905, average annual, 29; from 1906 to 1910, average annual, 59; in 1915, 70; in 1920, 71; and in 1927, 87. The increase is principally due to the addition to the registration area of States having considerable Negro populations, among which the ratio is relatively very high. The ratios for whites in 1915, 1920, and 1924 were, respectively, 53, 50, and 53; and for colored, 375, 296, and 401. On the whole the homicide rate shows little change.²

Some evidence of an increase of crime against property for gain may be afforded from the payments made for losses through embezzlements, frauds, and burglaries and other thefts by casualty and surety companies. The amounts paid for embezzlement and fraud losses were \$1,396,081 in 1910, \$4,406,923 in 1920, \$13,033,417 in 1925, and \$16,675,359 in 1928; while the amounts paid for burglary losses were \$886,045 in 1910, \$10,189,853 in 1920, \$12,563,809 in 1925, and \$10,778,473 in 1928.

¹ *Annals of American Academy of Political and Social Science*, May, 1926.

² Census Bureau, Mortality Statistics.

(Part of this increase is to be attributed to increased business.)¹ The amount of losses (adjusted to eliminate the effects of increased business) were, respectively, for losses from burglary, theft, and larceny in 1923 and 1928 as follows: total (not including fidelity), \$8,773,775 and \$6,233,759; residence burglary, theft, and larceny, \$3,714,596 and \$2,578,312; bank burglary, \$354,213 and \$68,473 (\$163,673 in 1927); bank robbery, \$571,042 and \$939,865; messenger robbery, \$401,530 and \$290,443; paymaster robbery, \$194,335 and \$297,178 (\$158,117 in 1927); office and store robbery, \$664,524 and \$507,524; mercantile safe burglary, theft, and larceny, \$723,836 and \$600,208; mercantile open stock burglary, theft, and larceny, \$2,049,673 and \$1,149,290; and fidelity (mostly embezzlement), \$11,085,441 and \$13,775,871.² Decreases appear in general except in the case of losses from bank robberies and fidelity losses.

COMPARISON AT DIFFERENT YEARS BY SEX, ETC.

The proportion of female offenders both among prison inmates and among commitments has slightly declined from 1910 to 1923 (not indicated in tables). The respective percentages for prison inmates are 5.5 and 4.8, and for commitments 9.7 and 8.0. There are increased proportions for females, however, as to certain offenses, including prostitution, vagrancy, larceny, violation of liquor laws, violation of drug laws, keeping house of ill fame, homicide, adultery, forgery, carrying concealed weapons, nonsupport of family, fraud, gambling, burglary, and robbery. To some extent increases for certain offenses are nothing more than the reflection of decreases for other offenses. In some instances an increase is doubtless due merely to better law enforcement. Some part of the increase for different offenses may be accounted for by the wider entrance of women into industrial and commercial life, with consequent enlarged opportunity for and incitement to crime.

Between 1910 and 1923 the proportion of females committed to special institutions for juvenile delinquents has perceptibly increased, or from one-seventh (13.7 per cent) to one-fifth (19.3

¹ See E. H. Sutherland, *Criminology*, 1924, p. 41; *Journal of American Institute of Criminal Law and Criminology*, July, 1916, Aug., 1927; *American Bankers Association Journal*, *passim*; Insurance Year Book (annual); World Almanac.

² Statistics furnished through courtesy of National Bureau of Casualty and Surety Underwriters.

per cent). The ratio to general population among females has increased from 472 to 604 in this period (the ratio for males decreasing from 2944 to 2519). This increase is to be ascribed largely to the wider use of such institutions for females.

The ratios of commitments to general penal institutions in 1910 and 1923 were for native whites 6092 and 4041, for foreign-born white 7949 and 5175, and for Negroes 18,227 and 13,059. The decrease seems to have been least among Negroes. The ratios of commitments of white juvenile delinquents to institutions of all kinds in 1910 and 1923 were 1386 and 1400, practically the same. The corresponding ratios for colored were 3980 and 2793—a notable decrease. (Figures not given in tables.)

Since 1910 the proportion single in either sex among commitments to penal institutions has slightly decreased, and the proportion married has slightly increased.

COMPARISON AT DIFFERENT YEARS BY AGE

In the following table are given the percentage distribution of commitments to general penal institutions and the ratio per 1,000,000 of the general population, according to age period, in 1910 and 1923.¹

PERCENTAGE DISTRIBUTION AND RATIO OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS ACCORDING TO AGE AT DIFFERENT YEARS

Age	Per Cent Distribution		Ratio per 1,000,000 of General Population	
	1923	1910	1923	1910
Total	100.0	100.0	4958	7680
15 to 17 years.....	2.0	2.5	1265	2218
18 to 20 years.....	8.7	7.3	5629	6332
21 to 24 years.....	14.8	13.4	7039	8915
25 to 34 years.....	28.0	27.1	5829	8578
35 to 44 years.....	22.6	20.6	5724	8494
45 to 64 years.....	17.0	16.4	3572	5858
65 years and over	1.4	1.6	1000	1954
Age unknown	5.6	11.1	—	—

¹ Census figures by age for earlier years are not comparable. Those as to inmates include persons in military and naval hospitals, in general hospitals, and in hospitals for the insane, persons awaiting trial or held as witnesses, and debtors; those as to commitments include persons committed for nonpayment of fine. For these figures, with due interpretations, see Children's Bureau Publications, No. 196 (Youth and Crime), 1930.

In respect to ratio there is a considerable decrease for all age periods—a circumstance probably indicating that non-institutional methods are the more being made to apply to all groups. The decrease is least in the case of those from eighteen to twenty, perhaps because of greater use for them of special reformatory institutions. (It is to be remembered that these figures have reference to local institutions as well as to State.)

In the following table is given the ratio per 1,000,000 of general population for prisoners admitted to State and Federal prisons and reformatories according to age, in 1910, 1923, and 1926.

RATIO OF PRISONERS ADMITTED TO PRISONS AND REFORMATORIES BY AGE
AT DIFFERENT YEARS

Age	Ratio per 1,000,000 of General Population		
	1926	1923	1910
Total.....	627	493	444
15 to 17 years.....	383	310	382
18 years	1295	853	746
19 years	1650	1116	905
20 years	1591	1062	852
21 to 24 years.....	1259	1018	871
25 to 34 years.....	811	640	561
35 to 44 years.....	480	403	313
45 to 54 years.....	270	229	191
55 to 64 years.....	156	133	104
65 years and over.....	74	58	47

A considerable increase in the ratio of those admitted to prisons and reformatories in this period, especially notable between 1923 and 1926, is found for all age groups. It is least for those from fifteen to seventeen, an age group for which commitment to institutions for juvenile offenders rather than to prisons and reformatories is becoming more and more the case. The increase is greatest for persons who are twenty, nineteen, and eighteen years of age. This may possibly mean that criminality is increasing most rapidly among persons of such ages; but of this we cannot be sure. There seems to be a shifting in general from the local penal institution to the State institution for offenders against the law of all kinds.

In the following table are given ratios per 1,000,000 of the general population with respect to inmates of and commitments (admissions) to special institutions for juvenile delinquents—

inmates in 1880, 1890, 1904, 1910, and 1923, and commitments in 1910 and 1923—for the several geographic divisions.

RATIO OF COMMITMENTS OF JUVENILE DELINQUENTS TO SPECIAL INSTITUTIONS
BY GEOGRAPHIC DIVISIONS AT DIFFERENT YEARS

Geographic Division	Ratio per 1,000,000 of General Population						
	Inmates					Commitments	
	1923	1910	1904	1890	1880	1923	1910
United States	1246	1250	1255	998	969	1565	1717
New England	1922	2586	2371	2013	2033	2298	2045
Middle Atlantic	1569	1674	2358	1956	2147	1857	2549
East North Central.....	1215	1762	1549	1233	937	1689	1526
West North Central	1236	1005	957	759	409	1135	1224
South Atlantic	1285	906	835	552	503	1808	1976
East South Central.....	866	527	296	158	168	1026	1503
West South Central.....	629	165	19	71	195	1108	932
Mountain	1998	1255	1141	667	—	1959	1858
Pacific	1473	1434	1223	543	697	1738	1295

Between 1880 and 1904 there was a very considerable increase in the ratio of juvenile delinquents to general population, so far as concerns inmates of institutions—the ratio at the earlier year being 969 and at the later 1255. This may be regarded as the period of the introduction of the special institutions for juvenile delinquents. Since 1904 there has been a slight but steady decrease in the ratio, or to 1250 in 1910 and 1246 in 1923. The ratio as to commitments shows a marked decline between 1910 and 1923, or from 1717 to 1565.¹ The decrease among juvenile delinquents in special institutions is largely attributable, not so much to an actual decline in juvenile delinquency, but rather to the development of the juvenile court and probation, with the consequent larger use of non-institutional methods of treatment.

Since 1910 there has been a decrease in the ratio of inmates in the eastern part of the United States, and an increase in the southern and western parts; in the ratio of commitments there has been a decrease in the Middle Atlantic, West North Central, South Atlantic, and East South Central divisions, and an increase in the remaining divisions. In the sections of the country where

¹The ratio of juvenile delinquents in institutions of all kinds, both special institutions and general penal institutions, was 1434 in 1880, 1492 in 1890, and 1545 in 1923. This probably means little more than the expansion in this period of special institutions, with enlarged accommodations for such offenders.

special institutions for juvenile delinquents are comparatively new, the increase in the ratios has been most rapid. The ratio for different areas thus depends in large measure upon the movement of special juvenile institutions. Other factors are age limits of commitment to special institutions and availability of general penal institutions, together with the extent of the employment of the juvenile court and probation systems.

The movement of juvenile delinquency between different years for a number of cities or communities taken together, as shown in their juvenile court records, is very difficult to ascertain, because of varying standards of measurement. For thirteen large cities the ratio of juvenile court cases to general population of corresponding age between 1915 and 1925 decreased in a larger number than it increased.¹

In the following table is given for Chicago from 1915 to 1925 the percentage of arrests of males from sixteen to twenty years of age among all arrests, the ratio of arrests of persons of such age per 100,000 of the general population, the percentage of cases of males from seventeen to twenty years of age disposed of in municipal court, and the percentage and the ratio per 100,000 of the general population of such cases disposed of in boys' court.²

PERCENTAGE AND RATIO OF ARRESTS AND OF CASES OF MALE YOUTHS DISPOSED OF IN CRIMINAL COURTS IN CHICAGO AT DIFFERENT YEARS

Year	Arrests		Per Cent Disposed of in Municipal Court	Disposed of in Boys' Court	
	Per Cent of Total	Ratio per 100,000 of General Population		Per Cent of Total	Ratio per 100,000 of of General Population
1915.....	9.7	10,850	5.7	86.2	10,533
1916.....	7.9	8,075	4.9	92.4	8,360
1917.....	8.3	10,243	4.8	92.8	9,673
1918.....	11.4	11,374	5.6	90.2	9,162
1919.....	11.8	10,090	6.3	75.0	9,025
1920.....	9.9	7,957	5.6	74.9	7,313
1921.....	8.1	8,549	4.3	81.1	8,638
1922.....	6.8	7,958	3.7	80.3	8,329
1923.....	6.2	9,973	2.8	88.1	7,317
1924.....	6.4	13,375	2.1	64.8	6,775
1925.....	6.0	13,623	1.7	71.3	6,250

¹ Children's Bureau Publications, No. 195 (Juvenile Court Statistics, 1927), 1929.

² *Ibid.*, No. 196 (Youth and Crime), 1930.

Here there has on the whole been a steady decrease in the proportion of arrests of males from sixteen to twenty years of age, with at the same time a steady increase in the ratio of such persons to general population, especially of more recent years. This probably means that arrests for all age groups of the population have increased (as has in fact been the case), but to a less extent for males of the ages named. On the other hand, the proportion of cases of males from seventeen to twenty years of age disposed of in the general municipal court has markedly declined in this period, as has also the proportion disposed of in boys' courts.¹ Most important of all, there is indicated a material downward trend in the ratio to general population of cases of such age in boys' courts (despite a general upward trend for cases in general municipal courts with respect to older persons).

Whether juvenile delinquency is actually increasing or decreasing in the United States, and how far the matter is being affected in general by the juvenile court and by probation, or by non-institutional methods of treatment, it is well-nigh impossible at present to determine. In any event, there is little statistical evidence that it is to-day on the increase.

ESTIMATES AS TO POSSIBLE INCREASE OR DECREASE IN CERTAIN FORMS OF CRIME

To an extent from the preceding discussion, and from certain general observations as well, a few estimates may possibly be drawn as to the movement of certain forms of crime, though any estimates upon the subject at the present moment are to be regarded as rather of tentative character, and are to be taken with the utmost caution.

Offenses of the nature of inebriety and open profligacy seem undoubtedly on the wane for the greater part of the country. Drunkenness is with little question much less on the whole than it once was—probably less to-day than at any other time in American history. This is, apart from general educational campaigns in the matter, largely the result of present prohibition laws, despite hostile sentiment and persistent violation in some quarters. There is a like decrease in allied offenses, especially disorderly conduct. On the other hand, violation of liquor laws, including

¹ Other cases in boys' courts, besides those of boys from seventeen to twenty years of age, are in general those in which older persons or girls above juvenile court age are involved.

rum-running, bootlegging, etc., has notably increased; but doubtless with better enforcement of the law such offenses can better be brought under control. Drug addiction and crimes consequent therefrom have with practical certainty been on the increase, but a check to this movement may be looked for in view of the present concern in the matter. Crimes against public health and safety, including those against traffic laws, may for a time be expected to show an increase; with necessary modern adjustments this movement may perhaps slow up. Whether offenses as to sex in general are on the increase or on the decrease, cannot be known; prostitution, so far as it shows itself in open soliciting or street walking, has, it may be said with little hesitation, decreased in most cities. Some, possibly most, offenses against the family seem to be on an upward movement, perhaps symptomatic in some measure of the present instability of family life (though possibly the situation as to certain offenses, as non-support of family, is affected by increasing severity of the law, or by more adequate facilities for court treatment).

Probably increasing, at least in relation to other offenses, or at least for the time being, are crimes that involve cold-blooded, calculated desire for gain, or crimes that perchance have relation thereto (though some of the apparent increase here may be rather the effect of heavier and longer sentences at the present day for such offenses). Crimes of this nature, especially when accompanied with violence, and with incidental homicide if necessary for their effectuation, are seemingly of greater frequency than formerly. Crimes on the order of robbery and similar crimes are being greatly facilitated through the modern automobile. Possibly the activities of a certain proportion of habitual criminals which have been directed against property for gain are now being transferred to new fields; in particular they are taking up as a profitable vocation offenses as to drug and liquor laws. Certain kinds of fraud or cheating or swindling and kindred offenses are perhaps on the increase because of increasingly greater opportunities for their commission in the constant industrial and commercial expansion of the present day. Such forms of wrongdoing have been able to overtake or to keep pace with legitimate business. There are being put forth, however, more determined efforts to do fitting battle with crimes of this nature.¹

¹Probably of appreciable influence in some communities in the better enforcement of criminal laws, and possibly also in a reduction of crime, whether or not of a lasting character, is the work of the special bodies

There is very likely a decrease in crimes of violence not due to desire for financial gain. Old-time feuds and the seeking of satisfaction through personal vengeance, with their possibly bloody encounters, are tending to disappear. Homicide from passion or impetuosity is also doubtless declining. The influences of education and of civilization are making themselves felt here.

It is quite possible that crimes in general of the more crude, uncouth, and rough character are slowly giving way to those so in less degree, though crimes of violence or crimes involving physical onslaughts may be expected long to remain with human society.

Perhaps to a large extent in the future the chief forms of crime with which society will have to grapple, apart from those arising from mental stresses, complexities, abnormalities, and the like, and apart from those actuated by one's determination to have one's will without regard to consequences or to the well-being of others, will be those in which are involved the element of financial gain.

So far as there has been an actual increase with some forms of crime, this has doubtless been due in greater or less measure, apart from the considerations just pointed out, to the restlessness and impatience with restraint found in some elements of the population at the present day, perhaps including a spirit of defiance or revolt, or a mind to have what or to do as one wants at whatever costs, or a temper to set up and be governed by standards of one's own choosing alone. Without proper direction, without adequate moral foundations, without power or willingness to discriminate between what is good and what is not, without adequate high-principled forces to hold back or check tendencies towards evil, and without care or thought as to what may be the broader consequences of one's conduct, such attitude may soon become of mischievous or harmful character, and may take on anti-social or criminal bents. With some there may develop inclinations to abandon one's self to mad pleasure or to indulgence or to dissipation, which may go to dangerous lengths, with peril alike to those so acting and to others. With some there may be awakened a mighty desire for the acquisition

organized for the advancement of criminal justice. By holding to their tasks the public officials entrusted with the enforcement of the law and with the prosecution of offenders, these bodies are undoubtedly having a wholesome effect upon the crime situation—besides awakening the interest and concern of the public, and keeping it informed.

of wealth, or for what wealth may bring, or for the emulation of the ease and comfort of living and the power and prestige of those having financial abundance—a desire perhaps to be achieved by whatever means will best serve. With some there are the difficulties of adjustment to a new American life, whether among newcomers from foreign lands or among those whose ways here have been quiet or secluded, all perhaps aggravated by opportunities at hand to lay hold upon ready money. Other factors having a part in disturbing the balance with respect to social obligations may at times be largely craving for excitement or for adventure. With a very considerable part of the population the step over the line into direct criminal actions may prove not only a short but an easy one.

All such impulses are doubtless intensified or promoted in greater or less measure among some groups by the decay of religious faith or by the weakening of a moral sense, and perhaps also by the loosening of home ties. A further consideration always to be reckoned with in America in the movement of crime, in part in keeping with the great and but partly developed natural resources of the country, and with the slow settling of community standards, is a strong sense of individualism, perhaps often accompanied with a more or less restive attitude, which, among no small portion of the inhabitants, has prevailed from early times or from frontier days. This attitude may be reflected equally in resentment at any attempted invasion of what are regarded as one's private rights, and in a readiness under given circumstances to act regardless of any possible legal restraints, with one's conduct left in one's own hands. A lack of respect for authority—of any kind or in any quarter—may become a trait of far-reaching consequence.

In a large sense crime in America may be expected to increase or to decrease (apart from the measure of restraint imposed upon those of mental weakness or aberration or defect) according as one comes to feel that one's attitudes and one's behavior are to be chosen without reference to their social bearings and implications, according as the possession of money becomes in the community the chief standard of success or the way to the manner of life mostly to be desired, and according as there are permitted in society opportunities and temptations toward crime, or to conditions that breed crime.

PART V

CONDITIONS AND CHARACTERISTICS OF
CRIMINAL CLASSES AS REFLECTED
IN PRISON POPULATION

CHAPTER XXVI

SEX

PROPORTION OF FEMALE OFFENDERS

In the following table is given the percentage of females among inmates of and commitments to general penal institutions (prisons and reformatories, jails and workhouses), together with the ratio of commitments for either sex per 1,000,000 of the general population, for the several geographic divisions of the United States (1923).¹

PERCENTAGE AND RATIO OF FEMALE PRISONERS IN GENERAL PENAL INSTITUTIONS BY GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent Female		Ratio of Commitments per 1,000,000 of General Population	
	Inmates	Commitments	Male	Female
United States	4.8	8.0	6101	553
New England	10.0	6.9	5210	374
Middle Atlantic	7.7	7.8	6668	566
East North Central.....	3.9	6.4	6605	479
West North Central.....	4.4	5.4	4515	273
South Atlantic	4.9	14.5	6160	1066
East South Central.....	4.0	10.1	3742	426
West South Central.....	2.7	9.9	4381	507
Mountain	2.2	7.2	6607	595
Pacific	2.3	4.5	11549	623

Of inmates in penal institutions in general, 4.8 per cent (5192) are female. Of commitments to such institutions, 8.0 per cent (28,673) are female. For every 1,000,000 of males in the general population there are 6101 committed to penal institutions, and for every 1,000,000 of females 553. There are thus over twenty

¹The statistics in this chapter are taken from reports of the Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927.

times as many male prisoners as female, and over eleven times as many commitments.

The circumstance that the proportion of commitments for females is much greater than the proportion of inmates is mere indication that their offenses are generally of less serious character than those of males.

The differences among different geographic divisions are not always easily to be accounted for. To some extent they doubtless reflect differences in the treatment of female offenders, especially in institutional treatment. The high proportion of commitments of females in the southern States is in large part due to the high proportion of commitments of colored females in this section.

The proportion of females committed (admitted) to special institutions for juvenile delinquents is practically one-fifth (19.3 per cent) (not indicated in table). The ratio per 1,000,000 of general population of like age is among males 2519, and among females 604. There are thus about four times as many commitments of male juvenile offenders as there are of female. The proportion of females among juvenile delinquents is a little more than double the proportion among adult offenders, or among those in general penal institutions. In other words, the tendency to place erring females in special institutions is a little over twice as great as to place them in general penal institutions. The age factor is of much importance here.

There are certain special reasons why fewer crimes are charged to women than to men. A very important factor is the relative physical weakness of women, which would prevent attempts at many forms of crime. Another consideration lies in the more protected lives which they lead, providing, on the one hand, less incentive to crime, and, on the other hand, less temptation or opportunity for crime. An additional factor is that, so far as crime is found to a greater extent among the foreign born, this would show itself the more among males, who greatly outnumber females in this group. Crimes as to sex, the kind most often found against women, lend themselves the more easily to concealment, and thus often do not come to the attention of the law. Finally, it is to be remembered that not infrequently there is waged less vigorous prosecution against female offenders than against male offenders, with consequently fewer sentences for the former sex. (Women may possibly have inherently a greater aversion or repugnance to some forms of wrongdoing represented in crime.)

CHARACTER OF OFFENSES OF FEMALES

In the following table is given as to inmates in general penal institutions and as to commitments thereto the percentage which is female for the several offenses, these being of a rather wide range (1923).

PERCENTAGE OF FEMALE PRISONERS IN GENERAL PENAL INSTITUTIONS
ACCORDING TO OFFENSE

Offense	Per Cent of Total	
	Inmates	Commitments
Total.....	4.8	8.0
Against the person.....	4.1	6.9
Assault	2.9	6.6
Homicide, grave	3.2	3.5
Homicide, lesser	6.1	8.1
Threat to do bodily harm.....	—	18.5
Against property, gainful.....	2.2	5.1
Burglary	0.5	0.9
Counterfeiting	2.4	3.7
Embezzlement	1.6	3.2
Forgery	2.2	3.7
Fraud	2.9	2.0
Possession of stolen property.....	3.7	5.4
Larceny	4.0	7.8
Robbery	1.3	1.8
Violation of revenue laws.....	—	3.1
All other	1.5	10.2
Against property, not gainful	3.7	1.2
Arson	7.7	2.6
Malicious mischief	3.6	3.9
Trespassing	—	0.6
Using another's property.....	0.4	0.5
Against sex morality.....	9.7	37.7
Adultery	40.4	41.0
Bigamy and polygamy.....	6.5	10.4
Crime against nature.....	0.2	—
Fornication	35.3	42.6
Keeping house of ill fame.....	42.4	52.9
Obscenity	13.6	16.5
Prostitution	100.0	100.0
Securing and transporting women for immoral purposes	3.4	6.2
All other	3.0	13.9
Against administration of government	4.2	7.8
Contempt of court.....	—	11.9
Escaping custody	3.2	4.5
Perjury	8.8	—
Resisting officer	—	8.3

PERCENTAGE OF FEMALE PRISONERS IN GENERAL PENAL INSTITUTIONS
ACCORDING TO OFFENSE—*Continued*

Offense	Per Cent of Total	
	Inmates	Commitments
Against public health and safety.....	6.8	4.0
Carrying concealed weapons.....	1.6	2.4
Nuisance	—	11.1
Violation of city ordinances.....	4.2	3.9
Violation of drug laws.....	9.4	10.4
Violation of traffic laws.....	—	0.5
All other	5.8	8.3
Against sobriety and good order.....	14.6	8.5
Disorderly conduct	14.7	12.9
Drug addiction	21.9	13.7
Drunkenness	8.1	5.0
Vagrancy	20.5	11.2
Against public policy.....	2.8	5.0
Cruelty to animals	—	1.0
Gambling	—	2.2
Violation of fish and game laws.....	—	12.8
Violation of liquor laws.....	2.8	5.1
All other	—	4.1
Against children and prisoner's family.....	11.0	7.6
Contributing to delinquency.....	25.7	19.2
Nonsupport or neglect of family.....	6.2	2.9
Violation of education laws.....	—	24.0
Unclassified and unknown.....	13.0	10.3
Delinquency	68.1	41.0
Violation of labor laws.....	—	2.0
Violation of parole.....	12.0	8.8
Violation of U. S. postal laws, etc.....	2.0	2.7
All other specified.....	7.7	7.9
Unknown	4.9	8.7

Among prison inmates the proportions for females are relatively very high in the case of offenses involving sex morality in general (prostitution, adultery, keeping house of ill fame, fornication, obscenity, and bigamy and polygamy). The proportions are also relatively high for offenses against sobriety and good order (drug addiction, disorderly conduct, vagrancy, and drunkenness)—to some extent no doubt related to or in part sex offenses. Other offenses with proportions above the average are lesser homicide, arson, perjury, violation of drug laws, contribution to delinquency, delinquency—contribution to delinquency and delinquency perhaps to some extent to be regarded as sex offenses—nonsupport or neglect of family, and violation of parole. Among commitments there are relatively high proportions in addition for females with respect to threat

to do bodily harm, contempt of court, nuisance, violation of fish and game laws, and violation of education laws—but with the omission of drunkenness and nonsupport or neglect of family. Notably low proportions are found for females as to offenses against property for gain, particularly those involving violent measures. Among this class of offenses larceny stands first with females.

In the following table is presented the percentage distribution of male and of female commitments in contrast, according to offense (1923).

PERCENTAGE DISTRIBUTION OF MALE AND FEMALE COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY OFFENSE

Offense	Per Cent Distribution	
	Male	Female
Total	100.0	100.0
Assault	3.7	3.0
Homicide	1.2	1.0
Burglary	2.8	0.3
Forgery	1.3	0.6
Fraud	1.5	0.4
Larceny	8.0	7.8
Robbery	1.2	0.2
Malicious mischief and trespassing	1.1	0.2
Adultery	0.2	1.7
Prostitution (and fornication)	0.5	12.6
Keeping house of ill fame	0.1	1.8
Rape	0.7	—
Carrying concealed weapons	1.7	0.5
Violation of city ordinances	3.0	1.4
Violation of drug laws	2.0	2.7
Violation of traffic laws	3.5	0.2
Disorderly conduct	14.4	24.8
Drunkenness	26.9	16.3
Vagrancy	7.7	11.2
Gambling	1.2	0.3
Nonsupport or neglect of family	1.1	0.4
Violation of liquor laws	11.6	7.3
Other offenses	4.3	5.4

Females have higher proportions than males for prostitution, keeping house of ill fame, and adultery (all offenses as to sex); disorderly conduct and vagrancy (probably in large part sex offenses, often embracing soliciting, street walking, etc.); and violation of drug laws. Sexual offenses on the part of females constitute much the larger part of all their offenses. The proportions for larceny, assault, and homicide among females are almost as large as the proportions among males.

In the following table is given for the different geographic divisions of the country the percentage of commitments which are female (1923).

PERCENTAGE OF FEMALE COMMITMENTS TO GENERAL PENAL INSTITUTIONS ACCORDING TO OFFENSE BY GEOGRAPHIC DIVISIONS

Offense	Per Cent of Total									
	United States	New England	Middle Atlantic	East North Central	West North Central	South Atlantic	East South Central	West South Central	Mountain	Pacific
Total	8.0	6.9	7.8	6.4	5.4	14.5	10.1	9.9	7.2	4.5
Prostitution (and fornication)	67.9	55.9	66.9	68.5	55.9	68.4	51.6	77.8	—	91.0
Disorderly conduct	12.9	13.8	8.3	7.9	10.1	28.9	20.9	14.8	7.2	3.8
Vagrancy	11.2	4.6	16.2	5.8	5.7	10.2	27.4	13.6	11.7	7.5
Violation of drug laws	10.4	—	14.8	20.3	32.4	—	—	7.5	20.9	5.7
Larceny	7.8	6.6	15.2	7.4	4.8	8.3	7.7	5.4	4.4	3.9
Homicide	6.7	—	5.5	6.3	7.4	7.9	8.6	4.0	—	—
Assault	6.6	1.3	3.6	4.6	3.0	11.0	11.9	12.3	5.6	3.2
Violation of liquor laws ..	5.1	5.1	5.2	6.3	2.8	6.2	5.2	3.9	5.5	4.2
Drunkenness	5.0	5.1	5.2	3.5	2.5	11.7	7.0	7.7	6.9	1.7
Violation of city ordinances	3.9	—	1.0	—	11.6	11.0	—	—	—	14.8
Forgery	3.7	—	2.8	3.2	4.2	4.2	3.9	3.4	3.4	5.6
Nonsupport or neglect of family	2.9	4.4	4.6	3.0	1.6	—	—	—	—	—
Carrying concealed weapons	2.4	—	1.0	2.9	2.3	3.5	2.4	3.0	—	0.7
Gambling	2.2	—	—	0.7	2.6	4.6	2.1	1.8	—	—
Fraud	2.0	—	0.7	3.5	3.0	4.2	—	1.2	4.3	0.9
Robbery	1.8	—	2.3	1.1	0.4	4.8	—	2.3	—	—
Malicious mischief and trespassing	1.2	—	0.3	1.2	—	1.4	2.2	1.7	—	—
Burglary	0.9	—	0.6	1.1	0.6	2.3	0.4	0.6	0.5	0.7
Violation of traffic laws ..	0.5	—	0.4	0.4	—	0.9	—	—	—	0.8
All other classified offenses	12.5	13.9	11.7	12.3	7.7	19.9	22.1	17.3	8.4	7.0
Unclassified and unknown.	10.3	—	10.5	13.2	24.8	8.9	7.6	11.7	5.5	2.5

The differences between the several divisions are due to some extent to differences in the terminology employed with respect to particular offenses.

CHAPTER XXVII

AGE

PROPORTION OF OFFENDERS AT DIFFERENT AGES

In the following table is given the percentage distribution according to age of inmates in general penal institutions (prisons and reformatories, jails and workhouses), and of commitments thereto, the number of inmates and of commitments per 1,000,000 of general population (1923), the percentage distribution of prisoners received in prisons and reformatories (1926), and the percentage distribution of the general population fifteen years of age and over (1920).¹

PERCENTAGE DISTRIBUTION AND RATIO OF PRISONERS IN GENERAL PENAL INSTITUTIONS BY AGE

Age	Per Cent Distribu- tion of General Popula- tion	All Penal Institutions				Prisons and Reform- atories
		Inmates		Commitments		Per Cent Distribu- tion of Prisoners Received
		Per Cent Distribu- tion	Ratio per 1,000,000 Popula- tion of Same Age	Per Cent Distribu- tion	Ratio per 1,000,000 Popula- tion of Same Age	
Total	100.0	100.0	1513	100.0	2307	100.0
15 to 17 years...	7.9	2.0	392	2.0	596	4.9
18 years	2.6	2.7	1569	2.5	2171	5.5
19 years	2.5	3.7	2182	3.2	2889	6.7
20 years	2.5	4.4	2665	3.1	2881	6.3
21 to 24 years...	10.4	19.7	2867	14.8	3291	20.9
25 to 34 years...	23.8	34.2	2176	28.0	2716	30.8
35 to 44 years...	19.6	18.8	1454	22.5	2656	15.0
45 to 54 years...	14.6	8.7	904	12.3	1955	6.2
55 to 64 years...	9.1	3.4	565	4.6	1172	2.2
65 years and over	6.8	1.2	260	1.4	463	0.6
Age unknown ...	0.2	1.2	—	5.5	—	

¹The statistics in this chapter, unless otherwise indicated, are taken from reports of the Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929.

The most striking feature about this table is the large proportion of prisoners in the years of late youth and early adult life. Almost two-thirds (64.7 per cent) of inmates in penal institutions of all kinds, slightly over one-half (51.6 per cent) of commitments, and seven-tenths (70.2 per cent) of prisoners received in prisons and reformatories are from eighteen to thirty-four years of age, the very heyday of life, while only a little over two-fifths (41.8 per cent) of the general population are so. One-fifth (19.7 per cent) of inmates, one-seventh (14.8 per cent) of commitments, and one-fifth (20.9 per cent) of those received are from twenty-one to twenty-four, as against one-tenth (10.4 per cent) for the general population.

At the first age period, or from fifteen to seventeen, the proportion for the general population is substantially greater than for the prison population, but at eighteen the proportion for the prison population forges ahead, and remains so till thirty-four. After that time the proportion of the prison population perceptibly declines, and rapidly in relation to the general population.

The contrast in age between the prison population and the general population becomes the more marked in the ratio of the one to the other, or the number of prisoners per 1,000,000 of general population. The ratio of penal inmates of all ages is 1513; for those from twenty-one to twenty-four it is 2867, at twenty 2665, at nineteen 2182, and from twenty-five to thirty-four 2176.¹

A particular reason for larger proportions of imprisoned offenders among the younger groups is that they have not as yet the experience in criminal ways, including knowledge of methods of escape, which the older may have. The lower proportions of prisoners after forty-five, or after early adult life, may also to some extent be explained by the circumstance that the death rate among this group is relatively high, due to the irregular and hazardous lives of criminals generally, and to the physically subnormal conditions of a considerable number.

From what has appeared it is evident in general that crime flourishes at the time of youth, and that criminal careers often start at that time of life. In a very real sense, crime is essentially a matter of youth.

In the following table is given the percentage distribution of commitments to special institutions for juvenile delinquents according to age (1923).

¹If prisoners under eighteen years of age include juvenile delinquents in juvenile reformatories, reform schools, etc., the ratio for prison inmates from ten to seventeen years of age is 1561, and for commitments 778.

PERCENTAGE DISTRIBUTION OF COMMITMENTS OF JUVENILE DELINQUENTS TO
SPECIAL INSTITUTIONS BY AGE.

Age	Per Cent Distribu- tion	Age	Per Cent Distribu- tion
Total.....	100.0	14 years	16.5
Under 10 years.....	1.7	15 years	20.2
10 years	2.6	16 years	16.5
11 years	4.3	17 years	10.2
12 years	8.2	18 years and over.....	7.1
13 years	12.4	Age unknown	0.2

Of those placed in special juvenile institutions, one-fifth (20.2 per cent) are fifteen years of age; over one-half (53.2 per cent), from fourteen to sixteen; three-fourths (75.8 per cent), from thirteen to seventeen; and considerably over four-fifths (84.0 per cent), from twelve to seventeen.

In the following table is given the ratio of commitments to general penal institutions (prisons and reformatories and jails and workhouses) per 1,000,000 of the general population at different ages for the several geographic divisions of the United States (1923).

RATIO OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS ACCORDING TO
AGE BY GEOGRAPHIC DIVISIONS

Geographic Division	Ratio per 1,000,000 of General Population by Age							
	Un- der 18	18-24	21-24	25-34	35-44	45-64	65 and Over	Age Un- known
United States	2307	596	2638	3291	2716	2656	1655	463
New England	1712	295	1168	1539	1847	2348	2014	528
Middle Atlantic	2273	575	2320	3253	2610	2795	1857	584
East North Central.....	2376	507	2476	3211	2744	3281	1902	436
West North Central....	1697	333	1479	1831	1749	1984	1148	278
South Atlantic	2675	1011	3614	4419	3454	2423	1408	325
East South Central.....	1575	473	1953	2117	2079	1399	640	170
West South Central....	1973	819	3081	3070	2273	1357	810	260
Mountain	2822	592	3371	4083	3564	2878	1688	746
Pacific	4172	466	6044	7627	4804	4645	2948	1118
Federal prisons	28	2	16	44	45	35	15	5

Differences between different geographical divisions at certain age periods are in large part due to the extent of institutional facilities for caring for convicted offenders, to general policies

as to imprisonment, to the proportions of the foreign born and Negroes in the general population, and to other considerations.

AGE OF OFFENDERS ACCORDING TO SEX

In the following table is given the percentage of females among commitments to penal institutions, together with the ratio of males and of females, at different ages (1923).

PERCENTAGE AND RATIO OF FEMALE COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY AGE

Age	Per Cent of Total	Ratio per 1,000,000 of General Population	
		Male	Female
Total.....	8.0	4144	379
15 to 17 years.....	14.0	1031	165
18 to 20 years.....	12.7	4729	654
21 to 24 years.....	10.5	5996	676
25 to 34 years.....	8.6	4913	473
35 to 44 years.....	6.3	4776	349
45 to 54 years.....	4.5	3467	190
55 to 64 years.....	3.1	2143	78
65 years and over.....	3.5	888	32
Age unknown	8.9	—	—

An even larger proportion of females than of males enters crime in youth. The proportion of females among offenders is highest at the earliest age period, after which it steadily declines. Though the percentage of all commitments who are female is 8.0, the percentage from fifteen to seventeen is 14.0, from eighteen to twenty 12.7, and from twenty-one to twenty-four 10.5. For all age periods the ratio per 1,000,000 of general population is much higher for males than for females. With females the ratio is very high for the age period eighteen to twenty (654) and twenty-one to twenty-four (676). The ratio for females is also notable at the period twenty-five to thirty-four and thirty-five to forty-four. (One reason for the very high proportion of female offenders under eighteen is that many of this age are sent to reformatories for adults, instead of being provided with special institutions of their own, as is more often the case with males of like age.) Taken altogether, we have the saddening reflection that crime when it occurs among females is most pronounced in the tender years of late girlhood and earliest womanhood.

In the following table is given for different age periods the percentage distribution of male and female admissions to prisons and reformatories, together with the ratio for either sex per 1,000,000 of the general population of same age and sex (1926).

PERCENTAGE DISTRIBUTION AND RATIO OF MALE AND FEMALE ADMISSIONS TO PRISONS AND REFORMATORIES BY AGE

Age	Per Cent Distribution			Ratio per 1,000,000 of General Population	
	Total	Male	Female	Male	Female
Total	100.0	100.0	100.0	1144	81
Under 15 years.....	0.1	0.1	0.9	—	—
15 to 17 years.....	4.8	4.5	9.0	677	90
18 years	5.5	5.4	7.0	2418	204
19 years	6.7	6.6	7.4	3091	228
20 years	6.3	6.2	7.1	3113	215
21 to 24 years.....	20.9	20.8	22.3	2384	167
25 to 29 years.....	19.0	19.1	16.5	1781	104
30 to 34 years.....	11.8	11.9	10.1	1220	73
35 to 39 years.....	9.0	9.0	8.2	938	63
40 to 44 years.....	6.0	6.1	4.8	782	45
45 to 49 years.....	3.7	3.8	2.8	516	30
50 to 54 years.....	2.5	2.6	1.2	437	16
55 to 59 years.....	1.4	1.5	0.8	333	14
60 to 64 years.....	0.8	0.8	0.4	226	7
65 years and over.....	0.8	0.8	0.3	142	3
Age not reported.....	0.6	0.6	1.2	—	—

Here in no less pronounced fashion is indicated the fact of the commission of so large a part of crime in the springtide of life. Quite forcibly is exhibited the youthfulness of female offenders in particular. Of all females received in prisons and reformatories four-fifths (80.3 per cent) are under thirty-five; seven-tenths (70.2 per cent), under thirty; well over one-half (53.7 per cent), under twenty-five; almost one-third (31.4 per cent), under twenty-one; one-sixth (16.9 per cent), under nineteen; and one-tenth (9.9 per cent) under eighteen. At all age periods under twenty-five the proportion of females is larger than that for males, and most markedly under eighteen. The ratio for females is highest at nineteen, twenty, and eighteen, and for males at twenty, nineteen, and eighteen; after these years the ratio rapidly falls, but more so for females.

The median age of male admissions to prisons and reformatories is 26.6 years, and the median age of female 24.2.¹ The

¹ See pp. 188, 200.

median age of such males as a whole is 9 years less than the median age of males in the general population; the median age of such females is 10.2 years less than the median age of females in the general population.

In the following table is given the percentage distribution of boys and girls appearing before the juvenile courts in certain cities in 1928.¹

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS IN JUVENILE COURTS
IN CERTAIN CITIES BY AGE

Age	Per Cent Distribution	
	Boys	Girls
Total.....	100.0	100.0
Under 10 years	6	13
10 years, under 12	11	15
12 years, under 14	19	16
14 years, under 16	32	39
16 years, under 18	32	37

CHARACTER OF OFFENSES AT DIFFERENT AGES

In the table on page 185 is shown for commitments to general penal institutions the percentage distribution for different offenses according to the several age periods, together with the percentage of offenses committed at different ages (1923).

Under eighteen years of age relatively large proportions (above the average or for all offenses together)² are found for burglary, larceny, robbery, rape, malicious mischief and trespassing, forgery, homicide, prostitution, carrying concealed weapons, fraud, disorderly conduct, and violation of city ordinances; from eighteen to twenty, for burglary, malicious mischief and trespassing, robbery, larceny, fraud, prostitution, violation of traffic laws, rape, vagrancy, violation of city ordinances, forgery, carrying concealed weapons, gambling, and disorderly conduct; from twenty-one to twenty-four, for violation of city ordinances, robbery, prostitution, violation of traffic laws, fraud, malicious mischief and trespassing, forgery, burglary, larceny,

¹Children's Bureau Publications No. 200 (Juvenile Court Statistics, 1928), 1930.

²It is to be kept in mind that reference is only to percentages of offenses as compared with other percentages at different ages; there is not indicated the ratio with respect to general population at different ages for the several offenses.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS AT DIFFERENT AGES BY OFFENSE

Offense	Total	Under 18	18-20	21-24	25-34	35-44	45-54	55-64	65 and over	Age unknown
Per Cent Distribution by Age										
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Drunkenness	25.3	2.3	5.3	9.6	20.4	36.3	45.2	45.2	39.9	2.29
Disorderly conduct	14.8	17.6	15.4	14.0	14.0	15.4	16.3	17.3	16.8	9.9
Violation of liquor laws..	11.0	2.7	4.6	7.5	11.9	13.1	12.2	12.3	11.4	15.7
Vagrancy	7.8	7.2	11.3	9.9	7.3	5.7	5.4	7.2	13.6	11.5
Larceny	7.7	23.3	16.5	12.0	7.9	4.1	2.9	2.4	2.4	6.6
Assault	3.5	2.7	3.4	3.9	4.4	3.4	2.4	2.3	2.2	3.5
Violation of traffic laws..	3.2	1.9	5.0	5.5	3.6	2.3	1.4	0.5	0.2	2.9
Violation of city ordinances	2.8	3.1	4.3	5.9	2.9	1.7	1.5	1.4	1.4	0.6
Burglary	2.6	12.1	6.9	4.1	2.4	1.2	0.6	0.5	0.4	1.0
Violation of drug laws...	2.0	0.2	1.1	2.1	3.1	2.0	1.2	1.0	2.1	1.3
Carrying concealed weapons	1.6	1.8	2.0	2.1	1.9	1.1	0.7	0.5	0.5	2.5
Prostitution	1.4	1.7	2.5	2.8	1.7	0.7	0.4	0.1	0.2	1.6
Fraud	1.3	1.4	2.2	2.0	1.2	0.8	0.6	0.6	0.6	4.1
Forgery	1.2	1.7	1.7	2.0	1.4	0.8	0.6	0.6	0.5	0.7
Homicide	1.2	1.7	1.2	1.2	1.5	1.2	0.9	1.0	1.2	0.3
Gambling	1.1	0.9	1.1	1.3	1.5	0.7	0.4	0.2	0.2	3.2
Robbery	1.1	2.5	2.7	2.2	1.2	0.4	0.2	0.1	—	0.2
Malicious mischief and trespassing	1.0	1.8	2.3	1.5	0.9	0.5	0.3	0.3	0.3	2.3
Nonsupport or neglect of family	1.0	0.1	0.3	0.8	1.4	1.3	1.0	0.6	0.4	0.6
Rape	0.6	1.4	1.0	0.9	0.6	0.5	0.5	0.6	0.9	0.2
Adultery	0.3	0.1	0.3	0.4	0.5	0.2	0.1	0.1	—	0.6
Keeping house of ill fame	0.3	0.1	0.1	0.2	0.4	0.3	0.3	0.2	0.3	0.3
All other classified offenses	4.3	4.1	4.9	4.9	4.8	3.9	3.3	3.0	2.4	4.1
Unclassified and unknown	2.9	7.5	3.9	3.4	3.1	2.5	1.8	1.8	2.1	3.1

Per Cent Distribution by Offense										
Total	100.0	2.2	9.3	15.7	29.6	23.9	13.1	4.9	1.5	
Drunkenness	100.0	0.2	1.9	5.9	23.7	34.1	23.2	8.7	2.3	
Disorderly conduct	100.0	2.5	9.5	14.6	27.7	24.4	14.1	5.6	1.6	
Violation of liquor laws..	100.0	0.6	4.0	11.0	33.1	29.3	14.9	5.6	1.5	
Vagrancy	100.0	2.1	13.9	20.7	28.8	18.1	9.3	4.7	2.6	
Larceny	100.0	6.5	19.7	24.2	30.2	12.7	4.8	1.5	0.4	
Assault	100.0	1.7	9.0	17.1	36.6	22.8	8.7	3.2	0.9	
Violation of traffic laws..	100.0	1.3	14.5	26.8	33.5	17.3	5.6	0.8	0.1	
Violation of city ordinances	100.0	2.3	13.6	31.9	29.2	13.6	6.5	2.3	0.7	
Burglary	100.0	9.8	24.0	24.5	26.9	10.6	3.1	0.8	0.2	
Violation of drug laws...	100.0	0.2	5.0	15.6	44.8	22.8	7.7	2.5	1.5	
Carrying concealed weapons	100.0	2.6	12.0	22.2	37.7	17.3	6.0	1.7	0.5	
Prostitution	100.0	2.6	16.1	30.6	35.0	11.5	3.4	0.5	0.2	
Fraud	100.0	2.5	17.1	26.0	29.2	15.6	6.2	2.5	0.7	
Forgery	100.0	3.0	13.0	24.9	34.3	15.7	6.4	2.2	0.6	
Homicide	100.0	3.0	9.0	14.7	35.2	22.8	9.7	4.1	1.5	
Gambling	100.0	2.0	10.2	21.0	44.4	15.9	5.2	1.0	0.3	
Robbery	100.0	4.8	22.3	31.1	31.6	7.5	2.3	0.4	—	
Malicious mischief and trespassing	100.0	4.0	22.8	25.2	28.7	12.6	4.7	1.6	0.4	
Nonsupport or neglect of family	100.0	0.3	2.9	11.5	40.3	29.1	12.5	2.9	0.5	
Rape	100.0	4.5	14.1	20.2	27.4	17.8	9.5	4.7	1.9	
Adultery	100.0	0.8	7.8	20.6	44.3	19.0	5.8	1.4	0.2	
Keeping house of ill fame	100.0	0.5	2.3	12.0	41.1	23.8	13.8	4.8	1.8	
All other classified offenses	100.0	2.0	10.6	18.0	33.3	21.9	9.9	3.4	0.8	
Unclassified and unknown	100.0	5.5	12.5	18.0	31.6	20.4	8.0	3.0	1.1	

carrying concealed weapons, gambling, vagrancy, adultery, rape, and assault; from twenty-five to thirty-four, for violation of drug laws, gambling, adultery, keeping house of ill fame, non-support or neglect of family, carrying concealed weapons, assault, homicide, prostitution, forgery, violation of traffic laws, violation of liquor laws, robbery, and larceny; from thirty-five to forty-five, for drunkenness, violation of liquor laws, non-support or neglect of family, and disorderly conduct; from forty-five to fifty-four, for drunkenness, violation of liquor laws, and disorderly conduct; from fifty-five to sixty-four, for drunkenness, disorderly conduct, and violation of liquor laws; and at sixty-five or over, for vagrancy, drunkenness, rape, disorderly conduct, and keeping house of ill fame.

Relatively speaking, larceny, burglary, and robbery are very pronounced at early adult life—indeed, to a very large extent in the later years of youth. This is particularly true of burglary. Fraud and forgery are at their highest in early adult life. Gambling is a little more in evidence towards thirty than at any other period. Malicious mischief and trespassing are most manifest at the beginning of adult life.

Homicide has variations in the time of life of its occurrence, being a little more pronounced at eighteen and in the neighborhood of thirty. Assault is highest towards thirty. Carrying concealed weapons has high proportions up to thirty-five. Rape has its largest proportions at the earlier periods and in advanced years. Prostitution has its highest proportions from the late 'teens to the mid-thirties; adultery, in the twenties and early thirties; and keeping house of ill fame, around thirty and in the late years of life.

Nonsupport or neglect of family is largely in evidence from the late twenties to the mid-forties. When this offense occurs it seems the more likely in the earlier years of married life.

Drunkenness in its relative frequency advances steadily to middle and late middle life, after which time it slowly decreases. Disorderly conduct shows itself most in early and in late life. Vagrancy has its two highest peaks at the threshold of manhood and in old age. Violation of liquor laws increases through most of life. Violation of drug laws is most pronounced in the late twenties and early thirties. Violation of traffic laws and violation of city ordinances are at their highest in early adult life.

In late youth and early adult life crimes against property for gain, possibly accompanied by violence, are paramount. Crimes

of violence or against the person in general are most marked at such time of life. Towards middle life crimes springing from what are known as vices, together with actions hurtful to family life, are asserting themselves rather strongly. In the last years of life offenses associated with drink are in the lead.¹

The prevalence of such crimes as larceny, burglary, and robbery in early adult life, or rather at the end of youth, crimes against property for gain and with the use of force, is in large part due to the energy, physical strength, and sharp wits which mark this time of life, and which are often necessary for the accomplishment of these offenses. Some criminals who begin as common thieves pass on to the higher levels of fraud, forgery, and like offenses.

In the table on page 188 is given for male and female admissions to prisons and reformatories the percentage for the most important offenses according to different age periods, together with the median age for such offenses (1926).

With males in prisons and reformatories, there are relatively high proportions under eighteen for burglary, larceny, possession of stolen property, and robbery; between eighteen and twenty-four for robbery, larceny, burglary, and possession of stolen property; from twenty-five to thirty-four for violation of drug laws, nonsupport of family, embezzlement, carrying weapons, assault, homicide, forgery, sex offenses (not rape), fraud, possession of stolen property, and robbery; from thirty-five to forty-four for nonsupport of family, violation of drug laws, violation of liquor laws, fraud, embezzlement, sex offenses, assault, homicide, and forgery; and at forty-five and over for violation of liquor laws, sex offenses, fraud, violation of drug laws, homicide, rape, embezzlement, and assault. With females, there are relatively high proportions between eighteen and twenty-four for sex offenses, larceny, assault, and forgery; between twenty-five and thirty-four for violation of drug laws, violation of liquor laws, homicide, forgery, and assault; between thirty-five and forty-four for violation of drug laws, violation of liquor laws, and assault; and at forty-five and over for violation of liquor laws, violation of drug laws, forgery, and homicide.

With males, the median ages for the different offenses are, in order, as follows: larceny, burglary, possession of stolen prop-

¹In Ohio such offenses as robbery, assault, and homicide are found the more frequently with younger offenders, and such offenses as fraud and certain sexual crimes with older. Report of Joint Legislative Committee on Prisons and Reformatories, Penal Problems in Ohio, 1926.

PERCENTAGE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY OFFENSE
ACCORDING TO AGE

Sex and Offense	Per Cent of Total						Me- dian Age
	Un- der 18 Yrs.	18-24 Yrs.	25-34 Yrs.	35-44 Yrs.	45 Yrs. and Over	Age Not Re- port- ed	
Male	4.6	39.0	31.1	15.1	9.6	0.6	26.6
Homicide	2.5	24.0	36.0	20.4	16.4	0.8	30.6
Rape	3.6	37.9	28.2	14.7	15.3	0.3	27.5
Robbery	4.4	54.5	31.4	7.4	2.2	0.1	23.8
Assault	2.9	29.1	36.2	20.7	11.0	0.4	29.1
Burglary	7.5	50.3	27.8	9.8	4.3	0.2	23.7
Forgery	2.7	37.6	34.3	16.3	8.4	0.6	27.3
Embezzlement	0.8	17.2	40.0	26.8	15.3	—	33.0
Fraud	1.2	19.3	32.3	27.8	18.8	0.5	34.0
Possession of stolen property..	4.5	49.5	31.6	10.5	3.9	0.1	24.4
Larceny	7.5	51.1	27.2	9.6	4.2	0.4	23.6
Sex offenses, except rape.....	1.4	21.6	33.3	23.4	19.8	0.4	32.7
Violation of liquor laws.....	0.3	15.4	30.8	27.2	25.5	0.8	36.0
Violation of drug laws.....	0.1	12.2	43.0	28.0	16.8	0.1	33.7
Carrying weapons	2.4	38.9	37.8	14.7	6.2	—	26.9
Nonsupport or neglect of fam- ily	0.2	19.2	41.9	28.9	9.4	0.2	32.3
Other offenses	5.8	36.4	28.9	15.7	12.7	0.4	27.3
Not reported	1.6	16.3	28.8	12.1	9.3	31.9	30.4
Female	9.9	43.7	26.7	13.0	5.4	1.2	24.2
Homicide	5.6	39.1	33.5	12.4	6.8	2.4	25.9
Assault	2.9	46.7	29.5	15.2	3.8	2.0	24.9
Forgery	4.6	44.4	32.4	10.2	7.4	0.9	25.1
Larceny	5.9	50.0	26.7	11.8	5.2	0.3	24.1
Sex offenses	7.5	57.0	24.6	8.1	2.2	0.6	23.1
Violation of liquor laws.....	0.4	15.2	38.3	28.3	17.5	0.4	34.0
Violation of drug laws.....	—	11.4	43.6	31.4	10.7	2.9	33.3
Other offenses	21.8	46.4	17.5	10.0	3.3	1.0	20.8

erty, robbery, forgery, rape, assault, homicide, nonsupport of family, sex offenses (not rape), embezzlement, and fraud. With females, the order (for the limited number listed) is as follows: sex offenses, larceny, assault, forgery, homicide, violation of drug laws, and violation of liquor laws.

Here are rather confirmed the observations made in connection with the preceding table. It is particularly found that with respect to inmates of prisons and reformatories such offenses as embezzlement and fraud—both against property for gain, but without involving violence—are rather the occurrences of the later or maturer years of life. With females the earliest offenses

in life are those of sex. A little later come offenses against property for gain and offenses against the person. With advancing years there come offenses involving violation of drug and liquor laws.

In the following table is given the percentage distribution for the chief offenses by juvenile offenders, or those under eighteen years of age, committed to general penal institutions, according to sex, with males divided into two age groups—ten to fifteen, and sixteen and seventeen (1923).¹

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO GENERAL INSTITUTIONS BY OFFENSE

Offense	Per Cent Distribution				
	Total	Male			Fe- male
		Total	10 to 15	16 and 17	
Total	100.0	100.0	100.0	100.0	100.0
Offenses against the person.....	4.7	4.6	5.1	4.6	5.7
Homicide	1.7	1.9	3.4	1.7	0.8
Assault	2.7	2.6	1.7	2.6	3.8
Other	0.3	0.2	—	0.2	1.1
Gainful offenses against property.....	41.8	46.7	55.3	45.9	12.1
Robbery	2.5	2.9	2.5	2.9	0.2
Burglary	12.1	13.9	12.2	14.1	0.6
Larceny	23.3	25.3	34.6	24.5	11.0
Other	4.0	4.6	5.9	4.4	0.2
Other offenses against property.....	2.3	2.6	2.5	2.6	0.4
Offenses against chastity.....	4.0	2.4	2.1	2.4	13.5
Drunkenness, disorderly conduct, vagrancy	26.9	24.0	9.3	25.3	45.2
Other	20.3	19.8	25.7	19.3	23.0

A little over two-fifths (41.8 per cent) of juvenile offenders are charged with gainful offenses against property. Very nearly all of this (35.4 per cent) is larceny and burglary, larceny alone being responsible for almost one-fourth (23.3 per cent). To drunkenness, disorderly conduct, and vagrancy are attributable over one-fourth (26.9 per cent). From two to four per cent are accused, respectively, of non-gainful offenses against property, assault, robbery, offenses against chastity, and homicide.

Males in youth commit relatively a greater proportion of offenses against property, both gainful and nongainful, and of homicide. Not far from one-half (46.7 per cent) of their offenses are against property for gain. Among males from ten to fifteen

¹ No record is kept of offenses in special institutions for juvenile offenders.

years of age such offenses constitute considerably over one-half (55.3 per cent) of all their offenses at this age—larceny alone constituting over one-third (34.6 per cent). Homicide is also relatively more frequent among this younger group of offenders. Among the older group of males, or those sixteen and seventeen, drunkenness, disorderly conduct, and vagrancy are much more prevalent. Assault, robbery, burglary, offenses against chastity, and offenses against property not for gain are also more frequent.

Among young female offenders drunkenness, disorderly conduct, and vagrancy are by far the leading offenses, constituting only a little under one-half (45.2 per cent) of all. Offenses against chastity are responsible for one-seventh (13.5 per cent). The offenses named together make up almost three-fifths (58.7 per cent) of the offenses committed by females. Assault is also relatively considerably more frequent among females than among males. Larceny constitutes over one-tenth (11.0 per cent) of the offenses of females. Probably there are a larger proportion of sex offenses than are indicated.

In 65 juvenile courts in 1928, of the offenses of boys 43 per cent were laid to stealing or attempt thereat, 28 per cent to acts of carelessness or mischief, 9 per cent to truancy, 7 per cent to being ungovernable, 6 per cent to running away, 2 per cent to injury to the person or attempt thereat, 2 per cent to sex offenses, and 3 per cent to other offenses. Of the offenses of girls 28 per cent were laid to being ungovernable, 15 per cent to running away, 19 per cent to sex offenses, 13 per cent to stealing or attempt thereat, 12 per cent to truancy, 8 per cent to acts of carelessness or mischief, 3 per cent to injury to the person or attempt thereat, and 2 per cent to other offenses.¹

In the juvenile courts of certain cities from three-fifths to four-fifths of the delinquency of boys is set down as against property, and approximately one-tenth as against morals—most of the remainder being set down as against the person. Often incorrigibility or being beyond parental control is mentioned as a general condition, perhaps in from one-sixth to one-third of all cases. Truancy, vagrancy, and tendency to run away are also designated. Of the delinquency of girls, four-fifths or nine-tenths, or even more, is said to be against morals, with nearly all the remainder against property. Incorrigibility or being beyond parental control is also frequently put forth, sometimes in over one-half of cases. At times, of cases against boys almost

¹ Children's Bureau Publications No. 200 (Juvenile Court Statistics, 1928), 1930.

one-half may be larceny, almost two-thirds larceny and burglary; and over four-fifths larceny, burglary, and incorrigibility; and of cases against girls over two-fifths each may be incorrigibility and immorality. These two offenses together with larceny may constitute well over nine-tenths of all offenses of girls.

CHAPTER XXVIII

RACE AND NATIVITY

PROPORTION OF OFFENDERS IN SEVERAL RACE AND NATIVITY CLASSES

In the table on page 193 is shown for the several race and nativity classes of the United States, and for males and females separately, the percentage distribution of inmates of general penal institutions (prisons and reformatories and jails and workhouses) and of commitments thereto (and according to kind of penal institution), together with the ratio per 1,000,000 of the general population of commitments of these several classes, and the percentage distribution of the general population eighteen years and over (1923).¹

Native and foreign-born whites make proportionately nearly the same contribution to the prison population, there being a slightly better showing for the latter, especially as to prisons and reformatories. A somewhat more considerable proportion, however, of foreign-born whites are committed to penal institutions for crimes than of native whites. The former constitute 19.4 per cent of the general population eighteen years of age and over, but 18.7 per cent of commitments, while the latter constitute 70.9 per cent of the general population, but 54.4 per cent of commitments. The ratio of commitments of the foreign-born whites is about one and one-fourth that of the native whites. A considerably larger proportion of the foreign born are in jails and workhouses than in prisons and reformatories. (The true situation as to the extent of crime by the foreign born most likely lies in the character of offenses committed by groups of different national origin.)

A much greater proportion of Negroes appear to commit crimes than of whites. Though constituting less than one-tenth (9.3 per cent) of the general population, they constitute almost one-third (31.3 per cent) of prison inmates and almost one-fourth (23.3

¹ The statistics in this chapter are taken from reports of the Census Bureau—Prisoners: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929—unless otherwise indicated.

PERCENTAGE DISTRIBUTION AND RATIO OF PRISONERS IN GENERAL PENAL INSTITUTIONS ACCORDING TO RACE AND NATIVITY CLASSES

Race and Nativity	Per Cent Distribution							Ratio of Com- mit- ments per 1,000,- 000 of General Popula- tion
	Gen- eral Popu- lation	Inmates			Commitments			
		Total	Pris- ons and Re- form- atories	Jails and Work- houses	Total	Pris- ons and Re- form- atories	Jails and Work- houses	
BOTH SEXES								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	4992
White	90.3	67.4	67.7	66.7	74.6	74.2	74.7	4143
Native	70.9	53.4	55.3	47.8	54.4	62.0	53.4	3908
Foreign-born	19.4	13.8	12.3	18.2	18.7	12.0	19.5	5005
Nativity unknown.	—	0.2	0.1	0.7	1.6	0.2	1.8	—
Negro	9.3	31.3	31.2	31.8	23.3	24.0	23.2	12360
Indian	0.2	0.4	0.4	0.2	0.5	0.5	0.5	12813
Chinese and Japanese	0.2	0.3	0.3	0.4	0.3	0.6	0.2	6665
Other races	—	0.5	0.3	0.9	1.2	0.7	1.3	12458
MALE								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	8953
White	90.4	67.8	67.8	67.7	76.8	74.6	77.0	7627
Native	69.6	53.6	55.3	48.4	55.9	62.2	55.0	7331
Foreign-born	20.9	14.0	12.4	18.6	19.3	12.3	20.2	8613
Nativity unknown.	—	0.2	0.1	0.6	1.6	0.2	1.8	—
Negro	9.0	30.9	31.0	30.7	21.2	23.6	20.9	20667
Indian	0.2	0.4	0.4	0.2	0.5	0.6	0.5	22487
Chinese and Japanese	0.3	0.4	0.3	0.4	0.3	0.6	0.2	8358
Other races	—	0.5	0.3	0.9	1.2	0.5	1.3	12683
FEMALE								
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	812
White	90.2	60.2	64.4	53.5	50.4	68.4	48.6	456
Native	72.3	49.7	56.0	39.6	37.7	59.0	35.6	432
Foreign-born	17.9	10.0	8.1	13.0	11.5	8.8	11.8	555
Nativity unknown.	—	0.6	0.4	0.9	1.1	0.6	1.2	—
Negro	9.6	39.1	35.1	45.6	48.0	29.5	49.8	4057
Indian	0.2	0.3	0.3	0.4	0.5	0.4	0.6	2221
Chinese and Japanese	0.1	0.1	0.1	0.1	—	0.2	—	273
Other races	—	0.3	0.2	0.5	1.1	1.5	1.0	8368

per cent) of commitments. Their ratio of commitments to total population is three times the ratio for whites. Among Negro females the proportion of criminals is especially pronounced, the ratio for commitments to total population being over eight times as great as the ratio for white females. A larger proportion of Negro females are in jails and workhouses than in prisons and reformatories.

Of all commitments of juvenile offenders to special institutions, four-fifths (79.3 per cent) are white, and one-fifth (20.7 per cent) colored. The ratio for whites per 1,000,000 of general population is 1400, and for colored 2793—the latter practically twice as great as the former—as to all institutions (figures not shown in table).

With Indians the proportion of offenders is not less than twice the proportion in the general population. Their ratio of commitments is three times the ratio for whites. Among females it is five times as great. With Chinese and Japanese the proportion for offenders is somewhat greater than for the general population. Their ratio is about one and one-half times the ratio for whites.

In the following table is given the percentage distribution of admissions to prisons and reformatories for the several race and nativity groups, with separate figures for males and females, Mexicans being specially designated (1926).

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
ACCORDING TO RACE AND NATIVITY CLASSES

Race and Nativity	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
White	75.6	76.1	67.0
Native white	67.7	68.2	60.4
Foreign-born white	7.9	8.0	29.3
Negro	21.4	20.9	2.0
Indian	0.6	0.6	0.6
Chinese	0.2	0.2	—
Japanese	0.1	0.1	—
Mexican	1.9	6.7	0.3
Other races	0.1	0.1	—
Race not reported	0.2	—	2.8

REASONS FOR DIFFERENT PROPORTIONS AMONG DIFFERENT CLASSES

The larger proportion of commitments among the foreign-born than among the native population is hardly due to any inherent

criminal proclivities with them, but rather to several incidental circumstances. A very large portion of the foreign born are at a time of life when crime is most common. There is among them an excess of males, with which sex crime is generally the more prevalent. Many of them are without normal home life, always a factor in crime. Their residence is largely urban, a condition rather predisposing to crime. The surroundings in which they live are the more often of untoward character, perhaps in overcrowded areas or in areas contiguous to vicious sections. So far as low economic levels may have a bearing upon crime, the effects would the more likely be manifest among them. This condition in some cases would preclude ability to pay fine, with consequent imprisonment. The crimes of the foreign born are frequently merely infraction of city ordinances. The circumstance that a larger proportion of the foreign born are in local penal institutions than in State institutions indicates a generally less serious character of their offenses. Considerations of weight are also to be found in the difficulties of adjustment to the laws, customs, and institutions of a new country. (Possibly some foreign-born offenders have come illegally and surreptitiously.)

With respect to the foreign born and crime the real problem may often be said to lie in the possible criminal tendencies of their children. The children of foreign-born parents seem somewhat more given to the commission of crime than are children of native parents. According to the report of the Census Bureau on prisoners and juvenile offenders for 1910¹ (there being no figures in the matter in later reports), though children of foreign or mixed parentage constitute only a little over one-fourth (27.6 per cent) of the native whites in the general population, they constitute fully one-third (33.8 per cent) of commitments among native white prisoners and juvenile delinquents. The ratio of commitments per 1,000,000 of general population for children of foreign or mixed parentage is 3850, as against 2879 for children of native parentage. Persons of foreign or mixed parentage represent two-fifths (39.6 per cent) of native white juveniles who are committed to institutions for juvenile delinquents, but only three-tenths (29.9 per cent) of all native whites from ten to seventeen years of age. In certain juvenile courts and in certain institutions to which juvenile delinquents are committed, the proportion of children, especially boys, of foreign parentage is appreciably higher than the proportion of children of native, now

¹Prisoners and Juvenile Delinquents in the United States: 1910, 1918, pp. 137, 194.

and then several times as high. Of children in 65 juvenile courts in 1928, 54 per cent were of foreign or mixed parentage.¹

To a considerable extent the larger amount of crime among children having parents of foreign origin is ascribable to urban conditions, especially those of less favorable character, to the strain upon family relations in a new land, and to limited contacts with wholesome and uplifting factors of American life. In large measure it may be charged to environmental factors.

The excessive amount of crime among Negroes is to be set down to several considerations. With many moral training has been neglected, and powers of self-control relatively but little developed. So far as restricted education may be a contributing influence in crime, this would be the more pronounced with Negroes. With the younger delinquency is partly to be set down to low financial levels, overcrowding in home, employment of mothers away from home, lack of constructive recreation facilities, etc. When living in towns and cities, their quarters are apt to be in localities where vice and wrongdoing abound, or where temptations are at hand. A particular penalty sometimes for their greater poverty and ignorance is that they cannot expect able and skilled counsel to protect them when under the prosecution of the law. Not infrequently also they are without means of paying the fines imposed upon them, and must in consequence suffer imprisonment. Possibly now and then in some communities actual discrimination may be practiced against them, or less consideration extended to them. Finally, in some sections, especially in the south, there are no reformatories for young Negro offenders, a circumstance that, on the one hand, deprives them of distinct means of improvement and, on the other hand, forces a larger proportion into regular penal institutions.

PROPORTIONS OF OFFENDERS OF DIFFERENT CLASSES IN DIFFERENT GEOGRAPHIC AREAS

In the table on page 197 is given for commitments to general penal institutions and for the general population (1920) the ratio of foreign-born whites and of Negroes per 1000 native whites, and for males and females separately, according to the several geographic divisions of the United States (1923).

In all geographic divisions except the South Central, and except with Federal prisons, the ratio of commitments is somewhat greater for foreign-born whites than for native, with no

¹ Children's Bureau Publications No. 200 (Juvenile Court Statistics, 1928), 1930.

RATIO TO NATIVE WHITES OF FOREIGN-BORN AND NEGRO COMMITMENTS TO
GENERAL PENAL INSTITUTIONS ACCORDING TO GEOGRAPHIC DIVISIONS

Geographic Division	Ratio per 1000 Native White			
	Foreign-born White		Negro	
	General Population	Commit- ments	General Population	Commit- ments
	Both Sexes			
United States	274	349	131	423
New England	564	649	18	76
Middle Atlantic	490	531	47	276
East North Central	287	376	36	307
West North Central	206	222	32	202
South Atlantic	56	107	448	1635
East South Central	20	11	409	824
West South Central	90	114	281	847
Mountain	261	275	16	89
Pacific	344	426	13	75
Federal prisons	274	268	131	309
	Male			
United States	300	351	130	375
New England	588	643	19	65
Middle Atlantic	537	523	49	251
East North Central	321	380	39	284
West North Central	230	228	33	182
South Atlantic	65	111	439	1416
East South Central	23	11	396	749
West South Central	100	116	270	728
Mountain	295	285	20	74
Pacific	403	439	13	68
Federal prisons	300	268	130	309
	Female			
United States	247	314	132	1260
New England	541	743	17	257
Middle Atlantic	445	649	45	664
East North Central	252	307	33	708
West North Central	180	87	30	4558
South Atlantic	46	58	458	1954
East South Central	16	4	421	656
West South Central	79	61	294	3399
Mountain	221	143	12	294
Pacific	282	170	13	232

great differences among the several divisions. In all divisions the ratio for Negroes is several times that for whites. In the southern States the difference is least of all, in the East South Central division the ratio for Negroes being 2.0, in the West South Central 3.0, and in the South Atlantic 3.6, times that for whites. In the New England division the ratio is 4.2 times as great; in the Mountain, 5.6 times; in the Pacific, 5.8 times; in the Middle Atlantic, 5.9 times; in the West North Central, 6.3 times; and in the East North Central, 8.5 times. In Federal prisons it is 2.4 times. The difference in the ratios for Negro females is very great, sometimes being twenty or more times that for white females.

The fact that Negroes are more given to crime in the north than in the south is largely attributable to their urban residence in the north, in areas and under circumstances especially conducive to crime. The adjustment of the Negro to living conditions in the north, so far as they have a bearing on crime, has not been altogether favorable.

DIFFERENT CLASSES ACCORDING TO AGE

In the following table are given, according to age periods, for native white, foreign-born white, and Negroes, the percentage distribution, the percentage which each group constitutes of the total, and the ratio per 1,000,000 of the general population for each, with respect to commitments to general penal institutions (1923).

PERCENTAGE AND RATIO OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY RACE AND NATIVITY ACCORDING TO AGE

Age	Per Cent Distribution			Per Cent of Total			Ratio per 1,000,000 of General Population		
	Native White	For-eign-born White	Negro	Native White	For-eign-born White	Negro	Native White	For-eign-born White	Negro
Total	100.0	100.0	100.0	54.4	18.7	23.3	1746	2359	5695
Under 18 years....	2.0	0.5	3.4	54.7	4.7	38.7	391	561	2034
18 to 20 years....	9.4	3.6	11.9	58.5	7.6	31.8	1905	2908	7131
21 to 24 years....	15.6	7.4	19.9	57.2	9.3	31.4	2419	2903	9163
25 to 34 years....	27.5	26.8	31.7	53.4	17.8	26.4	2010	2677	7651
35 to 44 years....	22.4	31.8	17.0	54.0	26.4	17.6	2118	3123	4945
45 to 54 years....	13.0	19.0	6.3	57.2	28.8	11.8	1669	2394	2556
55 to 64 years....	5.1	7.3	1.6	60.0	29.7	8.2	1033	1399	1467
65 years and over..	1.5	2.3	0.4	57.8	31.5	7.0	406	541	484
Age unknown	3.6	1.3	7.8	35.3	4.4	33.1	—	—	—

Native whites have a larger proportion at the earlier periods than do foreign-born whites, there being somewhat over one-half

under thirty-five for the one, and less than two-fifths for the other. Negroes have a much larger proportion of their prison population in the early years of life than do whites, over two-thirds being under thirty-five years of age. The abnormally low proportions for foreign-born whites in the earlier years of life and the abnormally high proportions in later years is to be charged almost entirely to their general age distribution, and is without special significance. The reason for the relatively high proportions of offenders among Negroes in the earlier years of life, apart from any possible earlier propensities to crime on their part, is due in some degree to the circumstance that in many States, especially in the south, there are no special juvenile reformatories for their care, and regular institutions for adults have to be availed of.

In the following table is given the percentage distribution of male and female admissions to prisons and reformatories, according to age, for the several groups (1926).

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
BY RACE AND NATIVITY ACCORDING TO AGE

Age	Per Cent Distribution									
	Total		Native White		Foreign-born White		Negro		Other Races	
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Under 15 years	0.1	0.9	—	1.2	—	—	0.2	0.6	—	—
15 to 17 years	4.5	9.0	4.9	11.2	2.2	6.1	4.6	4.9	2.3	11.8
18 years	5.4	7.0	5.9	7.8	3.0	5.0	4.9	5.3	2.6	9.8
19 years	6.6	7.4	7.2	8.1	3.7	3.3	6.1	6.6	5.3	8.8
20 years	6.2	7.1	6.9	7.9	3.7	6.1	5.0	5.4	5.7	8.8
21 to 24 years	20.8	22.3	21.8	21.7	11.5	14.9	20.7	24.4	23.1	28.4
25 to 29 years	19.1	16.5	18.4	14.9	15.6	14.4	22.5	21.3	22.7	8.8
30 to 34 years	11.9	10.1	11.3	9.7	16.0	11.0	12.2	11.5	13.9	4.9
35 to 39 years	9.0	8.2	8.1	6.7	15.2	16.0	9.6	9.8	9.6	5.9
40 to 44 years	6.1	4.8	5.7	4.8	10.7	7.7	5.7	4.9	5.4	—
45 to 49 years	3.8	2.8	3.5	2.6	7.6	7.2	3.3	2.1	3.8	2.9
50 to 54 years	2.6	1.2	2.6	1.2	4.7	2.8	2.0	1.0	2.4	1.0
55 to 59 years	1.5	0.8	1.5	0.9	2.8	2.8	1.1	0.1	0.8	1.0
60 to 64 years	0.8	0.4	0.9	0.3	1.5	1.7	0.6	—	0.8	2.0
65 years and over..	0.8	0.3	0.9	0.2	1.3	1.1	0.4	0.3	1.2	—
Not reported	0.6	1.2	0.5	0.8	0.4	—	1.1	1.8	0.3	5.9

In prisons and reformatories the foreign-born constitute the oldest of the several groups; Negroes, the next oldest; and native

whites, the youngest. In all groups males are of general higher ages than females.

In the following table is given, in contrast with such age for the general population fifteen years and over (1920), the median age for the several groups by sex (1926).

MEDIAN AGE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY RACE AND NATIVITY

Race and Nativity	Median Age			
	Prisoners Received		General Population	
	Male	Female	Male	Female
Total	26.6	24.2	35.6	34.4
Native white	25.8	23.5	34.0	33.2
Foreign-born white	33.1	30.1	40.7	40.7
Negro	26.7	25.4	34.1	30.8
Other races	27.9	22.1	—	—

Here the same order as to age appears among the three groups of prisoners. The difference between the median age of prisoners and that of the general population is largely maintained among the several groups. Among Negro females, however, the difference is only about half that for the groups taken together.

Among cases before juvenile courts in certain cities in 1928 (as found by the Federal Children's Bureau), the ratio per 1000 of general population of juvenile court age was for white boys 17.4 and for colored boys 58.5; for white girls 3.4 and for colored girls 14.8.¹

CHARACTER OF OFFENSES AMONG DIFFERENT CLASSES

In the table on page 201 is shown for commitments to general penal institutions the percentage distribution for different offenses according to the several groups, and the percentage of offenses committed by each group (1923).

As between native whites and foreign-born whites, relatively high proportions (above the average) ² are found for the latter

¹ From publications of Children's Bureau.

² It is to be kept in mind that reference is only to percentages of offenses compared with other percentages for different groups; there is not indicated the ratio with respect to general population for the different groups as to the several offenses.

PERCENTAGE OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY RACE
AND NATIVITY ACCORDING TO OFFENSE

Offense	Per Cent Distribution			Per Cent of Total		
	Native White	For- eign born White	Negro	Native White	For- eign born White	Negro
Total	100.0	100.0	100.0	54.4	18.7	23.3
Drunkenness	27.8	32.8	12.9	59.7	24.2	11.9
Disorderly conduct	12.8	16.2	19.4	47.0	20.5	30.6
Violation of liquor laws..	11.1	13.6	8.1	55.1	23.2	17.3
Vagrancy	7.7	6.7	8.1	54.2	16.0	24.4
Larceny	7.6	4.6	10.8	53.5	11.2	32.6
Assault	2.3	3.4	6.7	35.2	17.8	43.9
Violation of traffic laws.	4.1	2.5	1.6	69.8	14.5	11.8
Violation of city ordi- nances	2.9	3.5	2.3	56.2	23.5	19.6
Burglary	2.8	1.4	3.1	59.4	10.3	27.9
Violation of drug laws..	2.1	1.6	1.8	55.4	14.7	20.6
Carrying concealed wea- pons	0.9	1.2	3.5	32.1	14.2	51.4
Prostitution	1.2	0.6	2.7	45.8	7.3	43.7
Fraud	1.5	0.8	1.2	60.7	10.7	21.6
Forgery	1.7	0.5	0.7	75.9	8.2	12.8
Homicide	0.9	0.8	2.1	43.6	13.4	41.5
Gambling	0.5	0.4	3.1	26.0	5.9	64.0
Robbery	1.3	0.5	1.2	64.1	8.8	25.9
Malicious mischief and trespassing	1.0	0.5	1.7	50.7	8.4	38.1
Nonsupport or neglect of family	1.1	1.4	0.4	60.8	25.4	10.2
Rape	0.7	0.6	0.5	63.3	16.8	17.8
Adultery	0.4	0.2	0.3	64.2	8.6	23.5
Keeping house of ill fame	0.2	0.2	0.4	40.4	16.7	38.5
All other and unknown.	7.5	6.2	7.5	56.3	15.9	24.1

as to nonsupport or neglect of family, drunkenness, violation of city ordinances, violation of liquor laws, assault, disorderly conduct, and carrying concealed weapons. Certain of these offenses are rather incidental to life in cities in which the foreign born to such a large extent live. Native whites have larger proportions than foreign-born whites for homicide, burglary, robbery, larceny, fraud, forgery, vagrancy, violation of traffic laws, violation of drug laws, prostitution, rape, adultery, gambling, and malicious mischief and trespassing. The greatest excess for native whites is in crimes against property for gain. For many offenses there are little differences as between native and foreign-born whites.

As between native whites and Negroes, the latter have relatively high proportions for homicide, assault, larceny, burglary, malicious mischief and trespassing, carrying concealed weapons, gambling, disorderly conduct, vagrancy, prostitution, and keeping house of ill fame. These offenses are mostly ones against the person, or ones involving violence or disturbance of the peace, or ones rather of the nature of vices. The largest excess for Negroes is with respect to gambling, carrying concealed weapons, assault, and prostitution. Whites have relatively higher proportions than Negroes for violation of city ordinances, traffic laws, drug laws, and liquor laws, and for fraud, forgery, drunkenness, robbery, nonsupport of family, rape, and adultery. The differences are greatest in the case of violation of traffic laws and nonsupport of family. Violation of traffic laws and of city ordinances is rather characteristic of life in cities, in which whites are the more given to living. Forgery, and in less degree fraud (besides embezzlement), are to be regarded to a large extent as white men's crimes. In the registration area of the United States (1927) the ratio of homicides per 1,000,000 of the general population is 53 for whites, and 438 for colored—or over eight times as great for the latter as for the former.

In the table on page 203 is given the percentage distribution of male and female admissions to prisons and reformatories, according to different offenses, for the several groups—native white, foreign-born white, Negro, Indian, and Oriental (Chinese, Japanese, etc.) (1926).

With respect to males in prisons and reformatories, relatively high proportions are found for homicide among Negroes, Indians, foreign-born whites, and Orientals; for rape among Indians, foreign-born whites, and native whites; for robbery among Negroes and native whites; for assault among Negroes and foreign-born whites; for burglary among Negroes and Orientals; for forgery among Indians and native whites; for embezzlement among native whites; for fraud among foreign-born whites and native whites; for possession of stolen property among native whites; for larceny among Indians and native whites; for sex offenses (not rape) among Indians, foreign-born whites, and native whites; for violation of liquor laws among Orientals and foreign-born whites; for violation of drug laws among Orientals and foreign-born whites; for carrying weapons among Negroes and foreign-born whites; and for nonsupport of family among native whites. With respect to females, relatively high proportions are found for homicide, larceny, assault, and burglary

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
BY RACE AND NATIVITY ACCORDING TO OFFENSE

Sex and Offense	Per Cent Distribution					
	Total	Native White	For- eign- born White	Negro	Indian	Oriental
Male	100.0	100.0	100.0	100.0	100.0	100.0
Homicide	5.9	3.8	6.9	12.2	9.4	6.2
Rape	3.9	4.0	5.5	2.6	9.4	2.9
Robbery	8.8	9.0	8.5	9.2	4.3	2.9
Assault	4.9	2.9	7.4	10.7	4.7	4.8
Burglary	17.5	17.4	13.0	19.4	13.7	18.6
Forgery	6.5	7.7	4.2	3.6	12.4	3.7
Embezzlement	1.2	1.5	0.8	0.4	0.4	0.3
Fraud	2.2	2.6	3.5	0.7	2.1	0.8
Possession of stolen property.	3.3	3.8	2.4	2.0	1.7	1.7
Larceny	21.3	22.5	14.5	21.1	27.0	11.4
Sex offenses, except rape	2.8	3.0	4.1	1.4	4.3	1.6
Violation of liquor laws	7.9	7.9	11.8	5.4	4.7	18.3
Violation of drug laws	4.3	2.9	5.2	3.7	0.4	18.8
Carrying weapons	0.9	0.5	1.3	2.0	—	0.9
Nonsupport or neglect of fam- ily	1.0	1.2	1.0	0.4	—	0.6
Other	7.0	7.4	9.4	4.8	5.2	6.4
Not reported	0.6	0.7	0.6	0.4	—	0.1
Female	100.0	100.0	100.0	100.0	—	—
Homicide	5.9	1.6	5.0	15.5	—	—
Robbery	1.2	0.7	1.7	2.4	—	—
Assault	3.9	1.0	1.1	10.9	—	—
Burglary	1.9	1.7	1.1	2.6	—	—
Forgery	4.0	5.3	1.1	2.3	—	—
Embezzlement	0.1	0.1	0.6	0.1	—	—
Fraud	1.0	1.6	—	0.1	—	—
Possession of stolen property..	1.4	1.5	0.6	1.5	—	—
Larceny	10.6	7.5	11.6	16.7	—	—
Sex offenses	23.1	27.2	26.0	11.3	—	—
Violation of liquor laws	9.9	7.3	12.7	15.7	—	—
Violation of drug laws	5.1	5.2	2.8	6.1	—	—
Carrying weapons	0.2	0.1	0.6	0.5	—	—
Nonsupport or neglect of fam- ily	1.4	1.6	3.9	0.4	—	—
Other	29.6	36.6	31.5	13.7	—	—
Not reported	0.7	1.0	—	0.3	—	—

among Negroes; for forgery, embezzlement, and fraud among native whites; for possession of stolen property among native whites and Negroes; for carrying weapons among foreign-born whites and Negroes; for violation of drug laws among Negroes and native whites; for robbery, sex offenses, and violation of

liquor laws among native and foreign-born whites; and for non-support of family among foreign-born and native whites. (Indian and Oriental females are not included.)

In the following table is given, according to the leading offenses, the median age by sex of native whites, foreign-born whites, and Negroes among admissions to prisons and reformatories (1926).

MEDIAN AGE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY RACE AND NATIVITY ACCORDING TO OFFENSE

Offense	Median Age					
	Male			Female		
	Native White	Foreign-born White	Negro	Native White	Foreign-born White	Negro
Total	25.8	33.1	26.7	23.5	30.1	25.4
Homicide	31.0	38.0	29.1	32.5	—	24.6
Rape	26.5	37.7	26.5	—	—	—
Robbery	23.2	25.2	25.4	25.8	—	26.8
Assault	27.5	35.2	29.1	28.8	—	24.3
Burglary	23.3	27.3	24.3	24.2	—	23.4
Forgery	27.2	31.6	26.4	25.9	—	23.7
Embezzlement	32.7	36.5	37.5	—	—	—
Fraud	33.4	38.5	31.1	28.0	—	—
Possession of stolen property	24.2	26.9	25.0	25.3	—	21.0
Larceny	21.2	28.3	24.2	23.9	28.8	24.3
Sex offenses, except rape	31.5	38.8	32.7	22.5	25.8	24.7
Violation of liquor laws	35.8	40.7	35.4	36.4	42.5	30.9
Violation of drug laws	34.1	33.8	33.9	31.6	—	35.4
Carrying weapons	25.4	28.9	27.4	—	—	—
Nonsupport or neglect of family	31.8	37.0	31.9	23.5	—	—
Other	26.6	33.5	26.1	20.6	25.5	22.2
Not reported	29.2	33.9	33.8	19.8	—	—

COUNTRY OF BIRTH OF FOREIGN-BORN OFFENDERS

In the table on page 205 are given, according to country of birth, the percentage distribution of the foreign born in the United States (1920), and the percentage distribution of commitments, and the ratio per 1,000,000 of the general population, to general penal institutions, and to prisons and reformatories and to jails and workhouses separately (1923).

Ratios of commitments are above the average for all the foreign-born groups in the following countries: Finland, Mexico,

PERCENTAGE DISTRIBUTION AND RATIO OF FOREIGN-BORN COMMITMENTS TO
GENERAL PENAL INSTITUTIONS ACCORDING TO COUNTRY OF BIRTH

Country of Birth	Per Cent Distribu- tion of Foreign- born in United States	Commitments			
		Total		Prisons and Reform- atories	Jails and Work- houses
		Per Cent Distribu- tion	Ratio per 1,000,000 of General Popula- tion	Ratio per 1,000,000 of General Popula- tion	Ratio per 1,000,000 of General Popula- tion
All foreign countries	100.0	100.0	2265	168	2097
Northwestern Europe:					
England and Wales..	6.4	3.0	1067	85	982
Scotland	1.9	1.9	2333	114	2219
Ireland	7.6	13.6	4058	54	4004
Norway	2.7	3.4	2932	55	2877
Sweden	4.6	5.8	2876	53	2823
Denmark	1.4	0.6	1015	100	915
Netherlands	1.0	0.4	1009	137	873
Belgium	0.5	0.4	1835	112	1723
Switzerland	0.9	0.3	876	110	767
France	1.1	0.5	1092	131	961
Germany	12.3	4.3	798	75	722
Central Europe:					
Poland	8.3	10.1	2748	168	2580
Czechoslovakia	2.6	0.8	659	66	593
Austria	4.2	5.9	3177	169	3009
Hungary	2.9	2.9	2280	111	2170
Yugoslavia	1.2	1.0	1788	460	1328
Eastern Europe:					
Russia	10.2	10.5	2321	146	2176
Lithuania	1.0	0.9	2088	163	1925
Finland	1.1	3.4	6975	154	6821
Rumania	0.7	0.5	1488	214	1274
Southern Europe:					
Greece	1.3	1.7	2961	421	2540
Italy	11.7	10.5	2018	259	1760
Portugal	0.5	0.3	1364	89	1275
America:					
Canada—French	2.2	1.2	1238	114	1124
Canada—Other	5.9	4.3	1660	194	1467
Mexico	3.5	9.4	6129	773	5356
All other countries	2.4	2.3	2222	351	1871

Ireland, Austria, Greece, Norway, Sweden, Poland, Scotland, Russia, and Hungary. Countries with relatively high proportions for commitments to prisons and reformatories, or for the more serious offenses, are Mexico, Yugoslavia, Greece, Italy,

Rumania, Canada (non-French), and Austria. Some nationalities with high proportions in prisons and reformatories have low proportions in jails and workhouses; and *vice versa*. In the ratios for different countries the extent of urban residence and age distribution play a considerable part. The full extent of different factors we do not know.

In the following table is given the percentage of females among commitments to general penal institutions of foreign birth according to country of birth, together with the ratio of males and females per 1,000,000 of the general population of the same sex and country (1923).

PERCENTAGE AND RATIO OF FOREIGN-BORN FEMALE COMMITMENTS TO GENERAL PENAL INSTITUTIONS ACCORDING TO COUNTRY OF BIRTH

Country of Birth	Per Cent of Total	Ratio per 1,000,000 of General Population	
		Male	Female
All foreign countries	5.0	3921	249
Northwestern Europe:			
England and Wales	8.9	1854	201
Scotland	4.9	4218	240
Ireland	9.1	8394	662
Norway	1.6	5179	106
Sweden	1.6	5134	100
Denmark	3.6	1622	93
Netherlands	6.8	1642	160
Belgium	4.3	3058	187
Switzerland	2.9	1489	59
France	7.8	1941	177
Germany	5.4	1428	91
Central Europe:			
Poland	5.3	4590	336
Czechoslovakia	2.1	1192	30
Austria	4.3	5413	309
Hungary	6.5	3905	327
Yugoslavia	2.3	2580	128
Eastern Europe:			
Russia	5.3	3979	273
Lithuania	5.7	3210	307
Finland	1.5	12065	248
Rumania	2.6	2563	90
Southern Europe:			
Greece	2.5	3538	402
Italy	3.9	3260	193
Portugal	—	2159	249
America:			
Canada—French	6.0	2269	153
Canada—Other	5.8	3252	186
Mexico	3.0	10473	425
All other countries	4.0	3366	242

CHARACTER OF OFFENSES AMONG FOREIGN-BORN GROUPS

In the table on pages 208 and 209 are given for the leading offenses, according to country of birth, the percentage distribution and the ratio per 1,000,000 of foreign-born white population, with also separate figures for males and females, with respect to commitments to general penal institutions (1923).

According to both percentage distribution and ratio of commitments for the foreign-born population of the different countries, relatively high proportions (proportions in excess of the proportion for all countries together) are found for the various offenses among natives of different countries as follows: homicide, among natives of Italy, Greece, and Mexico; assault, among natives of Italy, Poland, Austria, Greece, and Hungary; robbery, among natives of Greece, Scotland, Italy, Mexico, and Russia; burglary, among natives of Mexico, Italy, and Scotland; larceny, among natives of Mexico and Greece; violation of drug laws, among natives of Greece, Mexico, and Italy; violation of liquor laws, among natives of Italy, Greece, Austria, Poland, Hungary, and Russia; prostitution, among natives of Canada, Greece, Mexico, and Russia; rape, among natives of Italy, Canada, Greece, Hungary, and Mexico; drunkenness, among natives of Finland, Norway, Sweden, Ireland, and Scotland; and disorderly conduct, among natives of Hungary, Poland, Ireland, Scotland, Sweden, and Russia.

With respect to females (listed for but a small number of countries), relatively high proportions are found for homicide among natives of Italy; for assault among natives of Italy and Poland; for robbery among natives of Ireland and Italy; for larceny among natives of Italy and Russia; for violation of drug laws among natives of Canada, Italy, and Russia; for violation of liquor laws among natives of Italy, Poland, and Russia; for prostitution among natives of Canada; for drunkenness among natives of Canada, Ireland, and Poland; and for disorderly conduct among natives of Ireland and Poland.

In the table on page 210 is given the percentage distribution according to the country of birth of male prisoners of foreign birth received in prisons and reformatories (1926).

Relatively high proportions in prisons and reformatories¹ are

¹ It is to be kept in mind that reference is only to percentages of offenses compared with other percentages for different groups; there is not indicated the ratio with respect to general population for the different groups as to the several offenses.

PERCENTAGE DISTRIBUTION AND RATIO OF FOREIGN-BORN COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY OFFENSE ACCORDING TO COUNTRY OF BIRTH

Country of Birth	Offense												
	Total	Homicide	Rape	Assault	Robbery	Burglary	Larceny	Violation of Drug Laws	Violation of Liquor Laws	Prostitution (Fornication)	Drunkenness	Disorderly Conduct	All Other
	Per Cent Distribution												
	BOTH SEXES												
All countries	100.0	0.8	0.6	3.4	0.5	1.4	4.6	1.6	13.6	0.6	32.8	16.2	23.9
Austria	100.0	0.8	0.3	5.1	0.5	1.1	3.6	0.7	20.9	0.5	28.5	8.3	29.6
Canada	100.0	0.4	1.0	1.5	0.3	2.1	5.3	1.7	9.5	1.2	45.8	9.4	21.8
England and Wales.	100.0	0.4	0.7	1.9	1.1	1.8	5.3	1.6	5.0	0.7	37.4	19.0	25.0
Finland	100.0	0.3	—	1.1	0.2	0.1	2.2	—	7.2	—	70.1	7.6	11.3
Germany	100.0	0.7	1.0	2.8	0.5	2.6	6.5	0.7	17.0	0.4	21.6	22.4	23.9
Greece	100.0	2.7	1.0	4.2	1.0	1.0	6.1	6.5	21.1	1.0	4.8	13.1	37.6
Hungary	100.0	0.6	1.0	3.5	0.2	0.8	3.0	0.1	18.4	0.2	18.7	35.2	18.3
Ireland	100.0	0.2	0.1	0.9	0.2	0.3	2.1	0.2	1.9	0.5	60.1	22.5	11.3
Italy	100.0	3.0	1.1	7.2	0.9	1.7	4.5	3.5	25.5	0.6	6.4	11.7	33.8
Mexico	100.0	1.0	0.8	3.2	0.7	3.2	11.1	5.9	11.9	0.8	18.0	5.8	37.5
Norway	100.0	—	0.3	0.9	0.2	0.4	1.9	0.2	6.0	0.3	65.9	12.9	11.1
Poland	100.0	0.5	0.6	6.3	0.3	1.2	3.7	—	19.1	0.4	28.1	23.1	16.7
Russia	100.0	0.5	0.2	3.3	0.6	1.2	4.6	1.2	15.1	0.7	19.0	17.4	36.2
Scotland	100.0	0.3	0.2	1.3	1.0	1.5	2.5	0.2	4.2	0.5	52.7	19.0	16.5
Sweden	100.0	0.2	0.2	0.7	0.3	0.4	1.7	0.1	5.6	0.3	61.5	17.6	11.4
Other countries	100.0	1.4	1.0	4.3	0.7	2.1	7.1	2.2	20.6	0.6	1.68	16.6	26.7
	MALE												
All countries	100.0	0.9	0.6	3.5	0.5	1.5	4.2	1.6	13.5	0.3	33.3	16.1	24.0
Austria	100.0	0.8	0.3	5.4	0.6	1.2	3.3	0.6	20.4	0.3	29.4	8.2	29.6
Canada	100.0	0.4	1.0	1.5	0.4	2.2	5.0	1.5	9.8	0.3	46.3	9.2	22.1
England and Wales.	100.0	0.2	0.8	2.1	1.2	2.0	4.1	1.5	5.4	0.4	38.6	18.6	25.1
Finland	100.0	0.3	—	1.1	0.2	0.1	1.7	—	7.0	—	70.7	7.6	11.4
Germany	100.0	0.7	1.0	2.9	0.5	2.7	5.6	0.7	17.3	0.2	21.9	22.5	23.9
Greece	100.0	2.8	1.0	4.3	1.0	1.0	5.1	6.7	21.1	0.8	4.9	13.4	38.0
Hungary	100.0	0.6	1.1	3.8	0.2	0.8	1.8	0.1	17.2	0.1	19.5	37.0	17.8
Ireland	100.0	0.2	0.1	1.0	0.1	0.4	1.8	0.2	1.9	0.2	61.4	21.6	11.2
Italy	100.0	3.0	1.2	7.3	0.8	1.8	3.8	3.6	25.4	0.5	6.6	12.0	34.0
Mexico	100.0	1.1	0.8	3.3	0.7	3.3	11.0	6.1	11.5	0.1	18.5	5.9	37.7
Norway	100.0	—	0.3	1.0	0.2	0.4	1.9	0.2	6.0	0.1	66.6	12.5	11.0
Poland	100.0	0.5	0.6	6.5	0.3	1.3	3.5	—	18.8	0.3	28.2	23.2	16.8
Russia	100.0	0.5	0.3	3.5	0.6	1.3	3.9	1.2	14.9	0.4	19.8	17.7	36.0
Scotland	100.0	0.4	0.2	1.4	1.1	1.6	2.7	0.2	4.2	—	52.9	19.1	16.3
Sweden	100.0	0.2	0.2	0.7	0.3	0.5	1.5	0.1	5.5	0.3	62.3	17.5	11.1
Other countries	100.0	1.4	1.0	4.5	0.7	2.2	6.8	2.2	20.4	0.2	17.1	16.5	27.0
	FEMALE												
All countries	100.0	0.4	—	1.0	0.3	—	12.2	1.2	15.0	6.2	23.3	18.5	22.0
Canada	100.0	—	—	1.0	—	—	8.9	5.0	4.0	14.9	36.6	12.9	16.8
Ireland	100.0	—	—	0.3	0.5	—	4.9	0.3	1.0	2.9	47.0	31.2	11.9
Italy	100.0	0.8	—	4.8	1.6	—	21.4	2.4	28.6	4.8	2.4	4.0	29.4
Poland	100.0	—	—	2.4	—	—	7.2	—	23.5	3.0	25.9	22.3	15.7
Russia	100.0	—	—	0.6	—	—	16.4	1.8	18.7	5.3	5.3	12.3	39.8
Other countries	100.0	0.8	—	0.5	—	—	15.6	1.0	19.7	8.3	14.4	15.1	24.4

PERCENTAGE DISTRIBUTION AND RATIO OF FOREIGN-BORN COMMITMENTS TO GENERAL PENAL INSTITUTIONS BY OFFENSE ACCORDING TO COUNTRY OF BIRTH—*Continued*

Country of Birth	Offense												
	Total	Homicide	Rape	Assault	Robbery	Burglary	Larceny	Violation of Drug Laws	Violation of Liquor Laws	Prostitution (Fornication)	Drunkenness	Disorderly Conduct	All Other
	Ratio per 1,000,000 of Foreign-born Population												
	BOTH SEXES												
All countries	2265	19	13	77	11	32	105	36	308	13	743	367	541
Austria	3177	24	10	163	17	36	113	23	665	16	905	262	942
Canada	1544	6	15	23	5	32	81	27	147	18	707	146	336
England and Wales.	1067	5	8	20	11	19	57	17	53	8	399	202	267
Finland	6975	20	—	73	13	7	154	—	501	—	4892	527	788
Germany	798	5	8	23	4	21	52	6	136	3	172	179	190
Greece	2961	80	28	125	28	28	182	193	625	28	142	386	1114
Hungary	2280	13	23	81	5	18	68	3	420	5	425	803	418
Ireland	4058	7	3	37	7	13	85	7	75	18	2437	912	457
Italy	2018	60	22	146	17	35	91	71	515	13	129	237	682
Mexico	6129	63	50	199	44	199	679	362	727	50	1106	353	2297
Norway	2932	—	8	27	5	11	55	5	176	8	1932	379	324
Poland	2748	14	17	172	8	34	102	1	525	11	771	635	459
Russia	2321	11	6	77	14	28	106	28	351	16	442	403	840
Scotland	2333	8	4	31	24	35	59	4	98	12	1230	444	385
Sweden	2876	5	5	21	8	13	48	2	161	10	1770	507	328
Other countries	1378	20	13	59	10	29	98	30	284	8	231	229	368
	MALE												
All countries	3921	34	24	137	20	58	167	63	531	10	1305	630	940
Austria	5413	43	19	291	31	65	176	31	1107	19	1589	442	1601
Canada	2969	13	31	46	11	66	150	46	292	9	1376	274	656
England and Wales.	1854	4	15	39	22	37	76	28	100	7	715	345	466
Finland	12065	35	—	129	23	12	211	—	844	—	8524	915	1372
Germany	1428	10	15	42	8	39	80	10	247	2	313	322	341
Greece	3538	97	35	153	35	35	181	237	745	28	174	474	1344
Hungary	3905	23	41	148	9	32	69	5	673	5	761	1443	696
Ireland	8394	15	7	81	11	31	151	13	162	18	5152	1813	939
Italy	3260	99	38	239	27	58	124	117	829	16	214	392	1107
Mexico	10473	110	88	342	77	350	1153	637	1200	15	1933	615	3951
Norway	5179	—	15	49	10	20	99	10	311	5	3447	646	567
Poland	4590	25	29	297	14	60	161	2	865	12	1293	1063	769
Russia	3979	21	10	138	25	50	155	47	593	17	788	703	1433
Scotland	4218	15	7	60	45	67	112	7	179	—	2232	806	687
Sweden	5134	9	9	38	14	23	75	3	284	14	3198	899	568
Other countries	2242	31	22	100	17	49	153	50	457	4	383	369	606
	FEMALE												
All countries	249	1	—	3	1	—	30	3	37	15	58	46	55
Canada	177	—	—	2	—	—	16	9	7	26	65	23	30
Ireland	662	—	—	2	3	—	33	2	7	19	311	206	79
Italy	193	2	—	9	3	—	41	5	55	9	5	8	57
Poland	336	—	—	8	—	—	24	—	79	10	87	75	53
Russia	273	—	—	2	—	—	45	5	51	14	14	34	109
Other countries	181	2	—	1	—	—	28	2	36	15	26	27	44

PERCENTAGE DISTRIBUTION OF FOREIGN-BORN ADMISSIONS TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO COUNTRY OF BIRTH

Offense	Per Cent Distribution											
	Total	England, Scot- land, and Wales	Norway, Sweden, and Denmark	Germany	Poland	Czechoslovakia, Austria, Hungary, and Yugoslavia	Russia	Greece	Italy	Canada	Mexico	Other Countries
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Homicide	6.9	2.7	2.7	6.1	4.4	9.3	3.3	9.8	13.9	3.7	6.7	4.3
Rape	5.0	5.4	6.7	6.6	8.0	6.0	3.6	4.5	6.5	3.0	2.7	4.4
Robbery	7.6	13.4	4.7	3.8	7.3	5.8	9.5	8.9	11.6	8.9	3.4	6.7
Assault	7.1	3.2	6.7	4.2	6.9	11.0	4.2	8.0	10.6	2.2	5.1	9.2
Burglary	14.2	17.2	11.3	16.0	14.5	8.5	14.1	5.4	7.5	22.0	22.3	13.2
Forgery	3.9	7.5	5.3	8.0	2.2	2.2	4.6	3.6	2.2	6.7	1.8	4.9
Embezzlement	0.6	1.6	0.7	1.4	0.7	0.5	1.0	0.9	0.4	1.0	—	0.5
Fraud	3.1	4.8	5.3	6.1	2.9	1.6	13.7	3.6	0.9	2.2	1.0	1.9
Possession of stolen property.....	2.2	3.2	—	2.8	3.3	2.2	4.6	0.9	1.6	3.7	1.6	1.4
Larceny	13.8	15.6	22.7	15.6	17.8	15.9	13.4	10.7	8.7	19.1	11.9	12.8
Sex offenses, except rape.....	3.6	7.5	5.3	5.7	3.3	4.1	1.3	8.0	3.0	2.2	1.4	5.5
Violation of liquor laws	12.7	7.0	12.0	12.7	14.5	17.5	13.4	11.6	11.0	6.9	20.5	8.6
Violation of drug laws.....	7.7	2.7	3.3	1.4	0.4	1.1	3.6	11.6	9.7	5.0	13.5	14.1
Carrying weapons	1.3	0.5	0.7	1.9	2.2	1.4	—	0.9	1.9	0.2	1.0	2.0
Nonsupport or neglect of family	0.8	0.5	2.0	0.5	2.2	1.6	0.7	—	0.3	1.7	0.6	0.8
Other	8.9	6.5	10.7	6.1	8.7	10.7	7.2	10.7	9.7	10.9	6.4	9.7
Not reported	0.5	0.5	—	0.9	0.7	0.5	2.0	0.9	0.4	0.5	0.2	0.2

found for homicide among natives of Italy, Greece, and the former Austro-Hungarian empire; for rape among natives of Poland, the Scandinavian countries, Germany, Italy, the former Austro-Hungarian empire, and Great Britain; for robbery among natives of Great Britain, Italy, Russia, Greece, and Canada; for assault among natives of the former Austro-Hungarian empire, Italy, and Greece; for burglary among natives of Mexico, Canada, Great Britain, Germany, and Poland; for forgery among natives of Germany, Great Britain, Canada, the Scandinavian countries, and Russia; for embezzlement among natives of Great Britain, Germany, Russia, Canada, Greece, and the Scandinavian countries; for fraud among natives of Russia, Germany, the Scandinavian countries, Great Britain, and Greece; for possession of stolen property among natives of Russia, Canada, Poland, Great Britain, and Germany; for larceny among natives of the Scandinavian countries, Canada, Poland, the former Austro-Hungarian empire, Great Britain, and Germany; for sex offenses (not including rape) among natives of Greece, Great Britain, Germany, the Scandinavian countries, and the former Austro-Hungarian empire; for violation of liquor laws among natives of Mexico, the former Austro-Hungarian empire, Poland, and Russia; for violation of drug laws among natives of Mexico, Greece, and Italy; for carrying weapons among natives of Poland, Germany, Italy, and the late Austro-Hungarian empire; and for nonsupport of family among natives of Poland, the Scandinavian countries, Canada, and the former Austro-Hungarian empire.

CHARACTER OF OFFENSES ACCORDING TO LENGTH OF RESIDENCE IN THE UNITED STATES

In the first table on page 212 is given the percentage of commitments of foreign-born male prisoners to prisons and reformatories, classified by offense, according to whether they have been in the United States ten years or more, from five to nine years, or less than five years (1923).

Relatively high proportions are found among those who have been in the United States ten years or more for violation of liquor and drug laws, homicide, and assault; among those who have been in the United States from five to nine years for robbery, rape, burglary, larceny and violation of drug laws; and among those who have been in the United States less than five years for burglary, larceny, and forgery. Crimes against the per-

PERCENTAGE OF FOREIGN-BORN COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO LENGTH OF RESIDENCE IN UNITED STATES

Offense	Per Cent of Total		
	10 Years or More	5-9 Years	Less than 5 Years
Total	70.4	15.7	13.8
Homicide	74.0	13.7	12.3
Rape	68.8	17.6	13.6
Assault	71.6	15.7	12.7
Robbery	68.9	18.2	12.9
Burglary	61.0	17.3	21.7
Forgery	69.6	13.9	16.5
Larceny	65.6	17.2	17.2
Violation of drug laws.....	72.4	16.2	11.4
Violation of liquor laws.....	74.3	15.2	10.5
All other offenses.....	76.8	14.0	9.1

son and violation of liquor and drug laws are thus rather to be expected from those who have been in America a relatively long period, while offenses against property for gain, perhaps attended with violence, are rather to be expected from newcomers. The factor of age distribution has much to do with the entire matter.

COUNTRY OF BIRTH ACCORDING TO LENGTH OF RESIDENCE

In the following table is given the percentage of commitments of foreign-born males to prisons and reformatories, classified by

PERCENTAGE OF FOREIGN-BORN COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO COUNTRY OF BIRTH BY LENGTH OF RESIDENCE

Country of Birth	Per Cent of Total		
	10 Years or More	5-9 Years	Less than 5 Years
All countries	70.3	15.8	13.9
Austria, Hungary, Czechoslovakia, and Yugoslavia	83.8	11.4	4.8
Canada	69.8	13.6	16.7
England, Scotland, Wales, and Ire- land	73.7	8.8	17.5
Germany	91.5	5.7	2.8
Italy	83.3	9.0	7.7
Mexico	26.6	29.8	43.6
Poland	80.7	17.0	2.3
Russia	84.7	13.1	2.2
Other countries	69.5	20.2	10.2

country of birth, according to whether they have been in America ten years or more, from five to nine years, or less than five years (1923).

Relatively large proportions are found for those who have been in the United States ten years or more among natives of Germany, Russia, the former Austro-Hungarian empire, Italy, Poland, and the British Isles; for those who have been in the United States from five to ten years among natives of Mexico and Poland; and for those who have been in the United States less than five years among natives of Mexico, the British Isles, and Canada.

EXTENT OF NATURALIZATION AMONG FOREIGN-BORN OFFENDERS

In the following table is given the percentage distribution of the foreign-born population (1920), and of commitments of foreign-born prisoners to prisons and reformatories, according to whether they are aliens, have first papers, or are naturalized (1923).

PERCENTAGE DISTRIBUTION OF FOREIGN-BORN COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO EXTENT OF NATURALIZATION

	Per Cent Distribution	
	Foreign-born Population	Commitments of Foreign-born Prisoners
Total.....	100.0	100.0
Alien	40.4	50.8
Having First Papers.....	9.4	18.3
Naturalized	50.1	30.9

The proportions for aliens and those having first papers (and having taken a step towards citizenship) are notably higher among commitments than in the general foreign-born population. Naturalization, or the securing of citizenship, would thus seem to have a materially deterrent effect upon crime. Other factors involved, however, are age distribution, length of residence in the United States, and general adjustment to its life.

EXTENT OF NATURALIZATION ACCORDING TO CHARACTER OF OFFENSES

In the following table is given for certain leading offenses the percentage of foreign-born male commitments to prisons and

reformatories, according to whether they are alien, have first papers, or are naturalized (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO EXTENT OF NATURALIZATION BY OFFENSE

Offense	Per Cent of Total		
	Alien	Having First Papers	Naturalized
Total	52.3	18.2	29.5
Homicide	48.7	25.4	25.9
Rape	56.1	22.0	22.0
Assault	57.1	21.8	21.1
Robbery	62.3	12.3	25.4
Burglary	64.9	9.3	25.8
Forgery	40.5	15.5	44.0
Larceny	58.7	12.5	28.8
Violation of drug laws.....	60.7	15.3	24.0
Violation of liquor laws.....	41.1	28.4	30.5
All other offenses.....	39.8	21.7	38.5

Offenses with relatively large proportions among aliens are burglary, robbery, violation of drug laws, larceny, assault, and rape; among those having first papers, violation of liquor laws, homicide, rape, and assault; and among those naturalized, forgery and violation of liquor laws. The more remote the attainment of citizenship the more likely are crimes against property for gain, crimes of violence, and crimes involving violation of drug laws. The situation is in considerable measure affected by the matter of age of the foreign-born population.

CHAPTER XXIX

RESIDENCE

GEOGRAPHICAL OR PHYSICAL CONDITIONING OF CRIME

Statistics upon the question of the connection between geographic situation and crime are largely wanting or are unsatisfactory. There need be, however, little doubt that certain forms of crime are affected by climate. The warmer a region, the more passionate, quick-tempered, and irritable are its people likely to be, with possibly consequent increased tendencies to crimes where such factors have a part. Conversely, in colder regions the population may be more prone to deeds requiring cool calculation or deliberate planning. In the former areas crimes against the person may be expected to be the more frequent; and in the latter crimes against property, except crimes of this nature arising from some sudden impulse.

By similar reasoning, some crimes are the more probable in warmer seasons, and others in colder. Seasonal variations in crime are also possible through opportunities for recreation, employment, etc., themselves more or less factors in the causation of crime.

A certain amount of crime may also have connection with the customs of a people, or general attitudes in different communities, such as carrying deadly weapons, open or concealed; feuds; mendicancy; infanticide; violation of liquor or drug laws; etc.

PROPORTION OF OFFENDERS IN URBAN CENTERS

In the following table is given the percentage distribution of persons committed to prisons and reformatories, and of males and females separately, according to place of commission of offense and according to place of residence of offender, with corresponding figures for the general population (1920), and the ratio of commitments per 1,000,000 of the general population, places

of less than 2500 population being known as "rural", and urban places being further classified by size (1923).¹

PERCENTAGE DISTRIBUTION AND RATIO OF COMMITMENTS TO PRISONS AND REFORMATORIES BY PLACE OF OFFENSE AND OF RESIDENCE

Sex and Place Where Offense Occurred	Per Cent Distribu- tion of General Popula- tion	Place of Crime		Place of Residence	
		Per Cent Distribu- tion	Ratio per 1,000,000 of General Popula- tion	Per Cent Distribu- tion	Ratio per 1,000,000 of General Popula- tion
Total	100.0	100.0	180	100.0	180
Urban places	51.4	77.8	251	70.4	231
Places of 100,000 and over	25.9	35.2	225	36.0	233
Places of 25,000 to 100,000	9.8	16.9	286	15.1	260
Places of 10,000 to 25,000.	6.6	10.2	258	8.7	224
Places of 2,500 to 10,000..	9.1	15.5	284	10.6	198
Rural districts	48.6	22.2	76	29.6	102
Male	100.0	100.0	332	100.0	332
Urban places	50.5	77.0	464	69.4	426
Places of 100,000 and over	25.6	34.6	412	35.4	429
Places of 25,000 to 100,000	9.6	16.5	525	14.8	478
Places of 10,000 to 25,000.	6.4	10.1	475	8.6	411
Places of 2,500 to 10,000..	8.9	15.8	541	10.6	370
Rural districts	49.5	23.0	141	30.6	191
Female	100.0	100.0	23	100.0	23
Urban places	52.3	88.7	37	86.0	35
Places of 100,000 and over	26.3	43.0	36	43.6	36
Places of 25,000 to 100,000	10.0	21.4	47	19.8	43
Places of 10,000 to 25,000.	6.7	12.3	40	11.4	37
Places of 2,500 to 10,000..	9.3	12.0	28	11.3	26
Rural districts	47.7	11.3	5	14.0	6

Delinquency is far more prevalent in urban centers than in rural areas. Though almost one-half (48.6 per cent) of the total population of the United States is rural, this population contributes with respect to place of crime only a little over one-fifth (22.2 per cent) of the number committed to prisons and reformatories, and with respect to place of residence of offender only three-tenths (29.6 per cent). The ratio of commitments to total population is over three times as great for urban areas as

¹The statistics in this chapter are taken from report of Census Bureau—The Prisoner's Antecedents: 1923, 1929 (based upon the records for 19,080 prisoners), unless otherwise indicated.

for rural, or 251 as against 76, with respect to place of commission, and over twice as great, or 231 as against 102, with respect to place of residence.

Though the city is much more given to crime than the country, we do not fully know whether crime increases progressively with the size of the city. The highest ratio appears rather to be in the medium-sized cities (25,000 to 100,000). With respect to place of commission of offense the lowest ratio is in cities of the largest size. With respect to place of residence of offender the lowest ratio is in cities of the smaller size.

The situation is affected by several factors. The smaller cities may often include offenders from nearby rural territory. In the larger cities, on the other hand, a considerable proportion of offenders are confined in jails and workhouses who in less populous communities would be sent to a prison or reformatory. Upon the matter in greater or less degree bearing is had by the readiness with which offenders are apprehended, or by the efficiency with which criminal justice is carried on, in different places. It is to be remembered also that a relatively much larger part of crime in cities escapes detection.

The tendency of females to commit their crimes in cities is pronounced. In fact, they may be said to be lawbreakers only to a slight extent in country districts. The ratio in rural areas with respect to place of commission is less than one-seventh of that in urban, and one-sixth with respect to place of residence. Their ratio in cities is lowest in those of the smallest size.

As between the proportion for the place of commission of the offense and the proportion for the place of residence of the offender, the latter is the larger in the case of rural sections. It would thus seem that a certain proportion of offenders go from them to the smaller cities to commit their crimes.

REASONS FOR URBAN TENDENCIES TO CRIME

There are several reasons why there may be expected a greater amount of crime in cities than in rural areas—both as to conditions which produce criminals and as to conditions which help criminals to commit crime or to escape. To meet the increasing intensity and complexity of urban life, various regulations have to be adopted, and these are bound to suffer violation to a greater or less extent. Over much wrongdoing in the city hangs the veil of secrecy. In its vast throngs identity may soon be lost. Outsiders even come to the city for the purpose of indulging in

forbidden activities, feeling secure from prying eyes. The exhausting nervous strain of modern life and the failure to adjust one's self to the requirements of the present-day order are likely to tell or to show their effects the more readily and the more pronouncedly in the city—perhaps largely induced by its very conditions. Imitation and the power of suggestion, so far as they are factors in the causation of crime, may be expected to be much stronger in the city, with its multiplied newspapers, theaters, crowd movements, and the like. The city may have more restricted or more baneful facilities for play and recreation—a circumstance always having close connection with the commission of crime by youth (though this is to some extent offset by the possession by cities of better organized recreation). The city is largely the gathering place for immigrant groups, among whom, or rather among whose children, crime prevails in a degree above the average. Accumulations of wealth and concentration of poverty are alike the more marked in the city; and whatever their effects upon crime, they show themselves more openly in the city. Contrasts of rich and poor are set off against each other in glaring fashion. In the city the economic struggle in general becomes the keener. Opportunities for the commission of certain crimes, no less than direct temptations thereto, with perhaps much in the way of plunder to reward effort, rather abound in the city, especially such crimes as burglary, swindling, and other crimes against property for gain. No less can be said for such crimes as prostitution, disorderly conduct, etc. This is especially true with respect to persons of weak wills or weak minds, or with respect to persons who have become hardened in crime. For some classes of criminals the city constitutes a rich field of operations. Vice and immorality, with actual crime in attendance or close behind, may be directly and deliberately organized in the city, to ensnare the feet of those who otherwise would not be tempted. Entrepreneurs are ever on hand, and customers are not far to seek. The city harbors solicitors of wrongdoing. The gangster and his compeers are developed and grow to power in the city. Finally, there is built up in the city a criminal population. To it criminals gravitate. In its density of life they are afforded a hiding place. In it ill-gotten gains can the more easily be disposed of. In it pursuit may be eluded, and new crimes concocted. A sort of criminal fraternity is created. The lure of the criminal career may in the city become an actuality.

In country districts at the same time there are special conditions that may lead to the commission of certain forms of

crime. Where life is isolated, perhaps stagnant, and there is little in the way of normal stimulation, including beneficial recreation, and where there is little inspiring leadership or helpful cultural contacts, there may be reversion to the primitive or uncouth, or tendencies developed towards degeneracy or demoralization. Suspicions may be nourished, and feuds kept alive. Gossip may hold a wide sway, with possible ill tendencies. Various petty crimes as well as crimes of passion may find vent in rural areas. In remote sections, especially mountainous regions, the criminal may continue his evil ways undisturbed; perhaps he may find refuge here. In rural areas the danger in general is not so much from open crime as from tendencies to delinquency.

CHARACTER OF OFFENSES ACCORDING TO SIZE OF COMMUNITY

In the table on page 220 is given the ratio of male and female commitments to prisons and reformatories per 1,000,000 of the general population, for the different places where the offense was committed, and where the offender resided, according to nature of offense (1923).

With respect to place of commission of crime, among males, the rural ratio is lower than the urban for all offenses except violation of liquor laws, the difference here being very slight. The excess ratio for urban places is proportionately lowest in the case of homicide. (The homicide rate per 1,000,000 of the general population in the registration area of the United States (1927) is 68 for rural areas and 103 for urban.) It is greatest in the case of violation of drug laws, the ratio for rural areas here being almost negligible. It also appears that what are known as habitual offenders, or professional criminals (especially as to burglary, robbery, and larceny), are the more likely to make their abode in cities.

As between cities of different size, the ratio for homicide is relatively the higher the smaller the city. Assault, burglary, larceny, forgery, and violation of liquor laws show practically this same tendency. Robbery and violation of drug laws show rather an opposite tendency, being the more frequent the larger the city. Embezzlement, possession of stolen property, and general sex offenses (not rape) are relatively most common in cities of next to the largest size. Fraud and rape are relatively most frequent in cities of the smallest size.

Among females, homicide is most frequent in medium-sized cities; prostitution, in cities of the largest size; and larceny and

RATIO OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO SIZE OF COMMUNITY

Ratio per 1,000,000 of General Population														
Sex and Offense	Place of Offense						Place of Residence							
	Total	Urban Places	Places with a Population of—				Rural Dis- tricts	Urban Places	Places with a Population of—				Rural Dis- tricts	
			100,000 and Over	25,000 to 100,000	10,000 to 25,000	2,500 to 10,000			100,000 and Over	25,000 to 100,000	10,000 to 25,000	2,500 to 10,000		
Total	180	251	225	286	258	284	76	231	233	260	224	198	102	
Male	332	464	412	525	475	541	141	426	429	478	411	370	191	
Homicide	30	32	26	32	33	49	18	29	28	32	27	33	23	
Grave	10	11	6	13	11	20	5	10	7	13	8	14	7	
Lesser	21	22	20	19	22	29	13	20	20	19	18	19	16	
Assault	17	21	19	22	21	26	9	20	19	23	21	18	12	
Robbery	28	45	56	41	29	27	6	45	61	39	25	19	7	
Burglary	59	82	68	91	94	107	23	77	75	86	81	73	30	
Larceny	63	94	80	110	105	111	23	85	84	97	84	73	34	
Embezzlement	5	6	6	8	5	6	2	6	6	6	5	6	2	
Forgery	24	37	25	43	44	57	9	32	25	37	40	39	14	
Fraud	6	8	7	9	6	12	2	8	8	9	5	8	3	
Possession of stolen property	6	10	10	12	10	7	1	10	10	11	10	7	2	
Rape	14	18	12	23	21	28	8	17	13	22	20	22	10	
Other sex offenses	10	14	11	17	16	14	4	12	12	14	13	10	6	
Violation of drug laws	19	36	49	38	16	10	1	32	45	32	15	8	4	
Violation of liquor laws	24	22	8	32	33	43	23	18	9	29	29	24	28	
Miscellaneous	26	39	34	45	41	43	11	35	34	40	36	31	14	
Female	23	37	36	47	40	28	5	35	36	43	37	26	6	
Homicide	2	2	2	3	3	2	1	2	3	2	3	2	1	
Larceny and related offenses	4	7	7	9	8	5	1	6	7	8	5	3	1	
Prostitution	4	6	7	7	5	3	1	6	7	6	5	4	1	
Violation of drug and liquor laws	3	6	6	9	3	4	1	6	6	9	3	3	1	
All other and unknown	10	16	13	19	22	15	2	15	13	18	21	14	3	

related offenses and violation of drug and liquor laws, in cities of the next largest size.

The situation is much the same with reference to the place of residence of the offenders as with reference to place of commission of crime, though with some appreciable modifications.

In New York State (1926) such offenses as carrying concealed weapons, burglary, and sex offenses are in general found with the greater frequency in sections that are rural than in urban. Assault occurs the more often with the increase in the populousness of different areas.¹

CONNECTION BETWEEN RESIDENCE OF OFFENDER AND LOCALITY OF CRIME

In the table on page 222 is given the percentage of commitments to prisons and reformatories for the several leading offenses, according to whether the offender had his place of residence elsewhere at the time of his offense than at the place where it was committed (1923).

A little over one-fourth (27.1 per cent) of all offenses are committed away from the home or place of residence of the offender. This is less true of females, the proportion for them being much smaller than that for males, or 10.4 per cent as against 28.3 per cent.

Among males the proportion is relatively high for violation of liquor laws, carrying concealed weapons, burglary, larceny, violation of United States postal laws, and forgery. Among females the proportion is relatively high for both larceny and prostitution. A large part of crimes committed by persons living elsewhere are crimes involving financial gain.

The criminal population is found to be to a considerable extent a floating body. With a number the residence of the offender is different from the place of his offense. A large part is of unsettled habits. The habitual or professional criminal in particular is without fixed abode.

The automobile has to-day become a powerful factor in the rapid movements of those committing crimes against property, especially burglary and robbery.

Criminals go from urban areas to rural, and from rural to urban, for the commission of their crimes. Those from rural areas who make the city the stage for their criminal operations seem rather prone to resort to the smaller cities, while at the same time

¹ Report of New York State Crime Commission, 1927.

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES IN RELATION
TO LOCALITY OF OFFENSE ACCORDING TO OFFENSE

Sex and Offense	Per Cent of Total	
	Residing at Place of Crime	Residing Elsewhere
Total	72.9	27.1
Male	71.7	28.3
Homicide	73.3	26.7
Grave	72.0	28.0
Lesser	74.0	26.0
Assault	72.1	27.9
Robbery	76.4	23.6
Burglary	69.4	30.6
Larceny	69.6	30.4
Embezzlement	83.6	16.4
Forgery	70.6	29.4
Fraud	73.0	27.0
Possession of stolen property.....	72.8	27.2
Rape	74.4	25.6
Other sex offenses	71.8	28.2
Violation of drug laws.....	85.3	14.7
Violation of liquor laws.....	59.8	40.2
Carrying concealed weapons.....	67.6	32.4
Nonsupport or neglect of family.....	78.4	21.6
Violation of U. S. postal laws, etc.....	69.8	30.2
Other specified offenses.....	69.4	30.6
Female	89.6	10.4
Larceny	84.1	15.9
Prostitution	87.4	12.6
Miscellaneous	91.2	8.8

there are some living in the largest cities who also commit their crimes in the smaller cities. In other words, the less populous urban areas are likely to have their criminal population added to from two different directions. The speeding automobile places all communities at the mercy of the bandit and spoiler.

In the following table is given the percentage of commitments

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BORN IN
STATE OF COMMISSION OF CRIME BY COLOR OR RACE

Color or Race	Per Cent of Total	Color or Race	Per Cent of Total
White—		Negro—	
Both sexes	45.7	Both sexes	54.3
Male	46.0	Male	54.4
Female	41.3	Female	53.5

to prisons and reformatories of persons, both white and colored, and for each sex separately, born in a different State from that in which the crime was committed (1923).

Approximately one-half of those who commit crimes do so in a different State from that in which they were born. Of the general population fifteen years of age or over only a little over one-third (35.1 per cent) live outside the State of their birth. An unduly large proportion of offenders are thus interstate migrants. In other words, a large proportion of the criminal class are rovers or floaters. It is also to be remembered that there is a considerable movement to other States among criminals after the commission of their crimes. (The figures given are only minimum estimates. They do not include those who have offended more than once or have returned to their native State.)

A larger proportion of Negroes (54.3 per cent) than of whites (45.7 per cent) have committed their crimes in a different State from that of their birth. This propensity is slightly more in evidence with males than with females.

CHARACTER OF OFFENSES IN RELATION TO NATIVITY OF OFFENDERS

In the following table is given the percentage of commitments to prisons and reformatories, for different crimes, according to

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO NATIVITY BY OFFENSE

Offense	Per Cent of Total		
	Born in State Where Crime Was Committed	Born in Other States	Born in Foreign Country
Total	43.6	40.1	12.8
Homicide	46.1	32.7	13.7
Rape	43.7	37.5	16.6
Assault	39.6	39.2	15.1
Robbery	42.9	45.6	9.0
Burglary	45.2	38.4	11.1
Larceny	46.5	42.3	8.8
Embezzlement	49.0	39.4	8.9
Forgery	41.3	47.4	9.1
Fraud	31.3	52.5	15.5
Possession of stolen property.....	34.2	46.7	16.1
Violation of drug laws.....	31.2	48.2	19.4
Violation of liquor laws.....	48.6	30.9	18.4
Sex offenses other than rape.....	43.1	38.7	14.2
All other classified offenses	43.2	37.5	16.7
Unclassified and unknown.....	45.8	34.9	15.7

whether the offenders were born in the State where the crime was committed, were born in another State, or were born in a foreign country (1923).

Offenses the more likely to be committed by persons born in the same State where they were committed are embezzlement, violation of liquor laws, larceny, homicide, burglary, and rape. Offenses the more likely to be committed by persons born in a different State are largely certain offenses against property for gain—fraud, violation of drug laws, forgery, possession of stolen property, robbery, and larceny. Relatively high proportions are found for persons born in foreign countries in the case of violation of drug and liquor laws, possession of stolen property, fraud, assault, rape, general sex offenses, and homicide.

LENGTH OF RESIDENCE IN LOCALITY OF OFFENSE

In the following table is given the percentage distribution of commitments to prisons and reformatories, and of males and females separately, according to the length of time they had been in the State or county where their crime was committed prior to its commission (1923).

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
BY LENGTH OF PREVIOUS RESIDENCE IN COMMUNITY

Time in County and in State before Crime	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
In county under 1 month.....	10.1	10.3	6.0
In State—			
Under 1 month.....	5.2	5.3	2.3
1 to 11 months.....	1.1	1.1	0.4
1 to 4 years.....	0.8	0.8	0.3
5 years and over.....	3.0	3.0	2.8
Time not reported.....	0.1	0.1	0.1
In county 1 to 11 months.....	17.2	17.4	14.4
In State—			
1 to 11 months.....	9.4	9.5	7.7
1 to 4 years.....	2.4	2.4	1.6
5 years and over.....	5.4	5.4	5.1
Time not reported.....	0.1	0.1	—
In county 1 to 4 years.....	17.4	17.2	20.3
In State—			
1 to 4 years.....	10.2	10.1	12.4
5 years and over.....	7.1	7.0	7.9
Time not reported.....	0.1	0.1	—
In both county and State 5 years and over	55.3	55.1	59.3

Here there is afforded new evidence of the transitory character of a considerable part of the criminal population. Of all persons placed in penal institutions, one-tenth (10.1 per cent) had been living less than one month in the county where their crime was committed. Over one-fourth (27.3 per cent) had been so living less than one year. Only a little under one-half (44.7 per cent) had been so living less than five years. In each case over one-half had been residing in the State at least as short a time. Practically one-sixth (15.7 per cent) of all offenders had been in the State less than one year. Females had in general been in the county or the State in which their crimes were committed a much longer time than males. Only 6.0 per cent had been in the county less than one month.

Probably in most cases the term of residence in the locality where the crime was committed is rather understated than overstated. At the same time transient criminals in general are less readily apprehended; doubtless a larger amount of crime is committed by this type of offender than is indicated by our figures.

CHARACTER OF OFFENSES IN RELATION TO LENGTH OF RESIDENCE

In the table on page 226 is given the percentage for male and for female offenders committed to prisons and reformatories according to the time they had been in the county and in the State where their crimes were committed, with regard to different offenses (1923).

Among males, the proportion for offenders who have been in the county less than one month is relatively high (above the average) for burglary, forgery, possession of stolen property, larceny, robbery, and fraud; from one to two months, for forgery, burglary, fraud, larceny, and robbery; from three to five months, for forgery, possession of stolen property, fraud, general sex offenses, robbery, larceny, and burglary; from six to eleven months, for fraud, forgery, general sex offenses, robbery, burglary and rape; from one to four years, for rape, embezzlement, assault, general sex offenses, violation of drug laws, violation of liquor laws, forgery, fraud, and homicide; and for five years or more, for violation of liquor laws, homicide, embezzlement, rape, assault, and violation of drug laws. According to time of residence in the State before the commission of the offense, the same situation largely prevails, though perhaps with a slightly different order of offenses.

In general, the shorter the period of residence in the locality

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO LENGTH OF RESIDENCE IN COMMUNITY

Sex and Offense	Per Cent of Total											
	County						State					
	Un- der 1 mo.	1 to 2 mos.	3 to 5 mos.	6 to 11 mos.	1 to 4 yrs.	5 yrs. and over	Un- der 1 mo.	1 to 2 mos.	3 to 5 mos.	6 to 11 mos.	1 to 4 yrs.	5 yrs. and over
Total	10.1	7.6	4.8	4.8	17.4	55.3	5.0	4.1	3.1	3.4	13.5	70.9
Male	10.3	7.6	4.9	4.9	17.2	55.1	5.1	4.1	3.2	3.4	13.5	70.6
Homicide	4.6	3.4	2.7	3.7	17.7	67.9	2.1	1.8	1.0	2.2	11.0	82.0
Grave	7.2	4.5	3.0	3.5	18.2	63.7	2.9	2.1	1.2	2.1	13.1	78.6
Lesser	3.5	2.9	2.5	3.8	17.5	69.8	1.7	1.6	0.9	2.3	10.0	83.5
Assault	5.2	5.0	2.7	4.9	19.9	62.2	2.5	2.3	1.6	3.7	14.8	75.1
Robbery	12.0	8.6	6.0	5.6	16.4	51.4	6.1	4.7	4.7	5.0	14.8	64.7
Burglary	16.0	10.7	5.1	5.6	14.6	48.0	6.8	5.7	3.9	3.7	13.1	66.8
Larceny	13.2	9.8	5.6	4.4	16.4	50.6	6.6	5.3	4.1	3.4	13.0	67.7
Embezzlement	3.5	4.4	2.2	1.8	21.1	67.0	3.0	3.0	1.3	0.8	12.7	79.3
Forgery	14.7	11.3	8.0	7.1	18.2	40.7	7.2	6.1	4.0	4.8	15.0	62.9
Fraud	11.2	10.1	6.3	7.3	18.2	46.9	6.3	9.3	3.3	5.7	17.0	58.3
Possession of stolen property	13.7	7.2	7.2	3.8	15.4	52.7	10.7	4.7	5.7	2.3	13.3	63.3
Rape	3.2	2.8	4.9	5.2	21.3	62.7	1.1	1.4	2.0	3.0	14.7	77.8
All other sex offenses.	7.8	7.1	6.3	6.0	19.9	52.9	4.6	3.8	4.8	4.4	13.7	68.5
Violation of drug laws	7.4	3.8	3.6	4.9	19.5	60.8	4.5	2.7	2.7	3.7	16.4	70.1
Violation of liquor laws	1.9	3.6	1.8	3.0	19.2	70.5	1.0	1.1				
Miscellaneous	9.1	6.6	4.7	3.9	15.2	60.3	5.4	3.2	0.5	1.4	12.1	83.9
									2.9	2.7	12.4	73.4
Female	6.0	6.2	4.1	4.0	20.3	59.3	2.1	3.5	1.7	2.6	13.5	76.7
Larceny and related offenses	16.1	10.7	6.0	3.6	22.6	41.1	6.6	4.4	3.9	2.8	12.2	70.2
Prostitution	7.9	7.1	4.3	5.7	14.3	60.7	3.5	4.7	2.3	2.3	13.5	73.7
Violation of drug and liquor laws	0.7	1.4	3.6	2.2	19.6	72.5	—	1.3	0.7	2.0	13.3	82.7
All other and unknown	3.5	6.8	4.4	5.2	21.0	59.1	0.7	3.8	1.2	3.3	13.1	77.9

of the crime, the more frequent are crimes against property for gain, especially when attended with violence—rather the crimes of the professional criminal, who, as we have seen, is the more likely to be of roving disposition or habits. A crime like embezzlement, on the other hand, is rather to be expected after a settled residence in a community. Crimes against the person also the more often occur with a long sojourn in the community. Homicide, however, is likely to be of the more serious character the shorter the residence.

CHAPTER XXX

FAMILY RELATIONSHIPS

GENERAL MARITAL CONDITION OF OFFENDERS

In the following table is given, for males and for females, according to marital condition, the percentage distribution of the general population fifteen years of age and over (1920) and of commitments to prisons and reformatories, together with the ratio of commitments per 1,000,000 of the general population (1923).¹

PERCENTAGE DISTRIBUTION AND RATIO OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO MARITAL CONDITION

Marital Condition	Male			Female		
	Per Cent Distribution		Ratio per 1,000,000 of General Population	Per Cent Distribution		Ratio per 1,000,000 of General Population
	General Population	Commitments		General Population	Commitments	
Total	100.0	100.0	484	100.0	100.0	34
Single	35.2	53.9	720	27.4	33.5	40
Married	59.4	39.8	316	60.7	52.9	29
Widowed	4.8	3.5	346	11.2	7.9	23
Divorced	0.6	2.7	2019	0.8	5.7	241

For males and females alike the proportion single is found greater among prison commitments than in the general population. The difference, however, is considerably more pronounced in the case of the former sex than it is in the case of the latter. For males the respective percentages are 53.9 and 35.2, and for females 33.5 and 27.4. Conversely, the proportions married are

¹ The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children Under Institutional Care: 1923, 1927; The Prisoner's Antecedents: 1923, 1929, unless otherwise indicated.

smaller among commitments than in the general population. With the widowed likewise there are smaller proportions for commitments. With the divorced the proportion for commitments is four times as great as for the general population in respect to males, and seven times as great in respect to females. The ratio per 1,000,000 of general population is for the married 316 among males and 29 among females, for the widowed 346 and 23, for the single 720 and 40, and for the divorced 2019 and 241.

The fact that married persons are less given to the commission of crime than are single persons may to a considerable extent be ascribed to the regularity and responsibility of life which the married state generally enjoins, linked as it is with the ties of the home. For the homeless and the unattached temptations, and at times predispositions as well, are greater. In some cases no doubt the very anti-social qualities which lead to crime have impeded the setting up of a home. At the same time the age distribution of the single, who are at the period of life when crimes are most often committed, has no small effect upon the matter.

PERCENTAGE AND RATIO OF COMMITMENTS TO PRISONS AND REFORMATORIES
BY AGE ACCORDING TO MARITAL CONDITION

Age	Per Cent of Total				Ratio per 1,000,000 of General Population				
	Male								
	Single	Married	Widowed	Divorced	Total	Single	Married	Widowed	Divorced
Total	53.9	39.8	3.5	2.7	484	720	316	346	2019
15 to 19 years....	93.9	6.0	—	0.1	567	525	1588	—	—
20 to 24 years....	71.3	26.7	0.6	1.4	1050	1025	958	1268	6420
25 to 34 years....	42.3	51.8	2.4	3.5	643	819	492	1016	3750
35 to 44 years....	31.3	58.3	6.0	4.3	393	740	279	770	1918
45 years and over	22.2	57.0	15.6	5.2	159	335	116	203	854
Total	Female								
	33.5	52.9	7.9	5.7	34	40	29	23	241
15 to 19 years....	69.1	28.8	1.3	0.9	51	39	112	—	—
20 to 24 years....	40.1	51.5	2.9	5.5	75	64	71	153	665
25 to 34 years....	17.8	64.3	8.3	9.6	38	34	31	96	368
35 to 44 years....	7.6	67.5	17.8	7.0	24	16	20	58	147
45 years and over	—	—	—	—	6	—	6	6	—

With some of the single, it is to be stated, the very fact of imprisonment serves as a disqualification for marriage. The greater liability to crime of widowed males than of married males may in some slight degree be ascribed to loss of family or of home; it would probably be greater still but for the advanced years of many of the widowed. (The tendency is probably also true of widowed females, as indicated in the next table.) The much greater liability to crime of the divorced than of the widowed, or of the single, may perhaps to some extent reflect certain antisocial tendencies among a part of the divorced group. With some there may be occasioned a reduced sense of responsibility, or possibly a spirit of bitterness or of general despire. Here also the lack of normal home life tells in the matter of crime. At the same time it is to be remembered that in some States conviction for an offense is itself a ground for divorce.

In the table on page 228 is given by marital condition the percentage of commitments to prisons and reformatories and the ratio per 1,000,000 of the general population, according to the several age periods (1923).

The proportion of those who commit crime at different ages among the several marital groups is largely influenced by the general distribution of commitments according to age. But even in the early years of adult life the ratio is found to be very high for the divorced; it is also high at such time for the widowed and for the married.

MARITAL CONDITION WITH DIFFERENT RACE AND NATIVITY CLASSES

In the table on page 230 is given the percentage distribution and the ratio of commitments to prisons and reformatories per 1,000,000 of the general population (15 years of age and over of same sex, race, and nativity), according to marital condition, for native whites, foreign-born whites, and Negroes, male and female (1923).

Among the foreign-born white, in contrast with the native white, the single seem a trifle more given to crime, and among females the divorced as well; with the other classes the tendency appears somewhat less. (The percentage of widowed offenders is higher for the foreign-born, especially females.) With Negro females, in contrast with white females, criminal activities are marked among the single. (The percentage of married offenders is higher for Negro males than for white.)

PERCENTAGE DISTRIBUTION AND RATIO OF COMMITMENTS TO PRISONS AND
REFORMATORIES ACCORDING TO MARITAL CONDITION BY RACE
AND NATIVITY CLASSES

Marital Condition	Per Cent Distribution			Ratio per 1,000,000 of General Population		
	Native White	Foreign- born White	Negro	Native White	Foreign- born White	Negro
	Male					
Total.....	100.0	100.0	100.0	426	302	1246
Single	54.9	52.7	51.6	603	616	1831
Married	38.5	41.0	43.1	284	181	823
Widowed	3.2	4.4	3.8	317	219	742
Divorced	3.4	1.9	1.5	2083	1283	2248
	Female					
	100.0	100.0	100.0	27	18	103
Total.....	100.0	100.0	100.0	27	18	103
Single	33.1	31.7	35.2	29	39	144
Married	53.9	50.0	50.9	25	13	84
Widowed	6.7	10.6	9.5	19	12	63
Divorced	6.2	7.7	4.4	214	289	342

CHARACTER OF OFFENSES AMONG DIFFERENT MARITAL GROUPS

In the table on page 231 are given for the several marital groups, male and female, the percentage distribution of commitments to prisons and reformatories according to offense and the percentage of the total for each offense (1923).

With males, the proportions are relatively high (above the average) among the single for all offenses involving stealing—burglary, robbery, and larceny, besides possession of stolen property. (They are also relatively high for such offenses as vagrancy and kindred offenses.) Among the married the proportions are relatively high for embezzlement, violation of liquor laws, general sex offenses, fraud, homicide, assault, forgery, possession of stolen property, rape, and violation of drug laws. Among the widowed the proportions are relatively high for homicide, rape, sex offenses, assault, fraud, violation of liquor and drug laws, and forgery. Among the divorced the proportions are relatively high for forgery, rape, fraud, embezzlement, general sex offenses, assault, and violation of drug laws.

With females, the proportion is relatively high among the

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING
TO MARITAL CONDITION BY OFFENSE

Offense	Per Cent Distribution				Per Cent of Total			
	Single	Mar- ried	Wid- owed	Di- vorced	Single	Mar- ried	Wid- owed	Di- vorced
	Male							
Total	100.0	100.0	100.0	100.0	53.9	39.8	3.5	2.7
Homicide	6.3	11.0	21.0	8.0	39.0	50.1	8.5	2.5
Rape	3.7	4.5	9.2	6.3	47.1	41.3	7.5	4.0
Assault	4.4	5.7	7.7	5.5	46.9	44.8	5.3	3.0
Robbery	10.8	5.8	2.1	6.7	69.5	27.4	0.9	2.2
Burglary	23.6	10.6	9.0	10.5	72.5	24.0	1.8	1.6
Larceny	22.4	16.0	8.9	16.6	62.9	33.1	1.6	2.4
Embezzlement	0.6	2.5	1.1	1.7	22.4	71.4	2.9	3.3
Forgery	6.6	8.1	8.2	11.4	48.4	43.5	3.9	4.2
Fraud	1.2	2.4	2.6	2.3	36.5	54.7	5.2	3.6
Possession of stolen property	1.9	2.0	1.0	1.1	54.2	42.3	1.9	1.6
Violation of drug laws..	5.7	5.9	6.7	6.5	52.7	40.3	4.1	3.0
Violation of liquor laws	3.8	11.8	10.3	7.6	28.2	64.0	5.0	2.8
Sex offenses other than rape	2.0	4.5	4.9	3.6	34.4	57.0	5.5	3.1
All other classified of- fenses	4.9	5.7	5.9	9.3	48.9	42.5	3.9	4.7
Unclassified and un- known	2.1	3.6	1.1	3.2	41.8	53.4	1.5	3.2
Female								
Total	100.0	100.0	100.0	100.0	33.5	52.9	7.9	5.7
Homicide	5.9	7.9	—	—	22.5	47.1	25.5	4.9
Larceny	10.1	14.9	—	—	26.9	62.8	4.8	5.5
Violation of drug laws..	3.6	9.2	—	—	—	—	—	—
Violation of liquor laws.	3.1	10.1	—	—	—	—	—	—
Prostitution	22.5	11.9	—	—	46.8	39.2	5.9	8.1
All other classified of- fenses	33.3	38.8	—	—	31.9	58.5	4.9	4.7
Unclassified and un- known	21.4	7.2	—	—	58.9	31.2	4.3	5.7

single for prostitution; among the married for larceny and violation of drug and of liquor laws; and among the widowed for homicide (and violation of drug laws). Among the divorced the proportion is relatively high for prostitution (and violation of liquor laws).

The high proportion of homicides for the widowed of either sex is largely due to the fact of the slaying of one spouse by the other, or with males uxoricide, an offense rather easily apprehended.

The high proportion for embezzlement with married males and for larceny with married females probably indicates in large measure family needs, real or supposed. For the high proportion among single males in respect to offenses of the nature of theft the factor of age is in great part responsible, these crimes being usually committed in late youth or early adult life, possibly before the age of marriage. This factor and the factor of race and nativity have a bearing upon certain other offenses.

EXTENT OF LIVING WITH MEMBERS OF FAMILY

In the following table is given the percentage distribution of commitments to prisons and reformatories, and of males and females separately, according to the members of their families or relatives with whom they were living at the time of their offending (1923).

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO MEMBER OF FAMILY WITH WHOM LIVING

Family Status	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Living with relatives	61.7	61.9	58.0
Wife or husband	31.0	31.1	28.8
Not with children or parents..	25.0	25.0	25.9
With children only	4.7	4.9	2.2
With children and one or both parents	0.4	0.4	0.3
With one or both parents	0.9	0.9	0.5
Children only	1.1	0.9	4.9
Children and one or both parents	0.1	0.1	0.5
Both parents	12.1	12.4	7.2
One parent	9.4	9.6	6.8
Other relatives	8.0	7.8	9.8
Not living with relatives	38.3	38.1	42.0

Homelessness or absence of normal family life is a great factor in crime. Lack of home life, moreover, may be incidental to a wandering or roving disposition. Unsatisfactory home life likewise may foster delinquency. To making the criminal what he is, looseness and weakness of home and family ties have powerfully contributed.

Almost two-fifths (38.3 per cent) of offenders were not living with any of their relatives, or at home, at the time their crimes were committed.

A little over three-tenths (31.0 per cent) were living with husband or wife—25.0 per cent with husband or wife only, and 6.0 per cent with children or parents also. In addition, 1.1 per cent were living with children only.

Of males, 31.1 per cent were living with wives. As 39.8 per cent of male offenders are reported to be married, it thus appears that over one-fifth of married male offenders were separated, by desertion or otherwise, from their wives at the time when their crimes were committed. Of females, 28.8 per cent were living with husbands. As 52.9 per cent of female offenders are reported married, there are thus over two-fifths of married female offenders who were separated from their husbands at the time of their crimes.

Only 6.3 per cent of offenders had been living with their children—6.3 per cent of males and 7.9 per cent of females. Thus apparently less than one-sixth of married offenders were living with their children at the time of the commission of their offenses. One reason for the small proportion of offenders living with their children is that a very large number are in the early years of life, or at a time when they can be expected to have few or no children. But with all allowance for this, it remains true that desertion or abandonment of children takes place with the criminal population far more frequently than with the general population, or that an abnormally large proportion of marriages of persons who become criminals are childless—much larger than for the population in general. (Three-eighths of divorces (1922) occur in families having children, a proportion twice as great as the proportion of married offenders living with their children.) Doubtless both of these two factors are of influence.¹

A little over one-fifth (21.5 per cent) of offenders were living with one or both parents—12.1 per cent with both and 9.4 per cent with one. The small proportion here is to be accounted for in part by the early leaving of home by many criminals, and in part by the circumstance that a number who are in adult life have no living parents, or have in natural order departed from their old homes; but there are a considerable number who are relatively young and who should be expected to be still under parental direction.

There are 8.0 per cent of offenders who had lived with other relatives than those named.

A somewhat larger proportion of female than of male offenders were not living with relatives of any kind at the occasion of

¹ See Census Bureau, *The Prisoner's Antecedents*: 1923, 1929, p. 26.

their offending. A much larger proportion of female offenders had been living with children only; to efforts to support these children may perhaps in some measure be ascribed their yielding to temptation. A considerably smaller proportion had been living with parents. A smaller proportion also had been living with their husbands than was the case of male offenders as to their wives. A larger proportion of female than of male offenders had been living with other relatives. All these considerations are of weight in the delinquency of females.

CHARACTER OF OFFENSES IN RELATION TO LIVING WITH FAMILY

In the following table is given for the principal offenses the percentage of married male and female persons committed to prisons and reformatories according to whether or not they were living at the time with wife or husband (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE
IN RELATION TO LIVING WITH SPOUSE

Sex and Offense	Per Cent of Total	
	Living with Wife or Husband	Not Living with Wife or Husband
Total	74.3	25.7
Male	76.2	23.8
Homicide	85.6	14.4
Grave	93.2	6.8
Lesser	82.5	17.5
Assault	77.2	22.8
Robbery	61.4	38.6
Burglary	70.3	29.7
Larceny	72.4	27.6
Embezzlement	86.3	13.7
Forgery	74.5	25.5
Fraud	90.5	9.5
Possession of stolen property	82.2	17.8
Rape	74.6	25.4
Other sex offenses	67.6	32.4
Violation of drug laws	69.3	30.7
Violation of liquor laws	90.4	9.6
Miscellaneous	73.3	26.7
Female	52.0	48.0
Larceny and related offenses	51.6	48.4
Violation of drug and liquor laws	70.3	29.7
All other and unknown	40.8	59.2

Of all married males almost one-fourth (23.8 per cent) were not living with their wives at the time of their crimes—a proportion close to that already discovered. The proportion is relatively high for robbery, general sex offenses, violation of drug laws, burglary, larceny, forgery, and rape. Conversely, among married males living with their wives the proportion is relatively high for fraud, violation of liquor laws, embezzlement, homicide, possession of stolen property, and assault.

Of married females, almost one-half (48.0 per cent) were not living with their husbands at the time of their wrongdoing. Among those living with husbands the proportion is relatively high for violation of drug and liquor laws. It is much lower for larceny and related offenses.

In the following table are given like figures according to offenders living with children (with the married there being included the widowed and divorced) (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE
IN RELATION TO LIVING WITH CHILDREN

Sex and Offense	Per Cent of Total	
	Living with Children	Not Reported as Living with Children
Total	13.0	87.0
Male	13.1	86.9
Homicide	12.6	87.4
Grave	13.1	86.9
Lesser	12.3	87.7
Assault	10.1	89.9
Robbery	7.0	93.0
Burglary	8.5	91.5
Larceny	10.0	90.0
Embezzlement	21.6	78.4
Forgery	10.3	89.7
Fraud	17.9	82.1
Possession of stolen property	12.3	87.7
Rape	20.9	79.1
Other sex offenses	15.5	84.5
Violation of drug laws	9.6	90.4
Violation of liquor laws	20.9	79.1
Miscellaneous	16.8	83.2
Female	11.3	88.7
Larceny and related offenses	7.5	92.5
Violation of drug and liquor laws	11.3	88.7
All other and unknown	14.7	85.3

Among males married, widowed, or divorced, only one-eighth (13.1 per cent) were living with their children when their crimes were committed. The proportion is relatively high for embezzlement, violation of liquor laws, rape, fraud, and general sex offenses.

Among females a slightly smaller proportion—11.3 per cent—were living with their children. The proportion is relatively high for larceny and related offenses when not living with children.

As a general thing, it would seem that crimes against property for gain, possibly attended with violence, are relatively of the more frequent occurrence when one is not living with one's family.

AGE OF SEPARATION FROM PARENTS

In the following table is given the percentage distribution of commitments to prisons and reformatories, and of males and females separately, according to whether they were not living with parents, and for those not so living the percentage distribution according to the age at which occurred separation from parents (1923).

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO AGE OF SEPARATION FROM PARENTS

Age of Separation from Parents	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Living with parents	23.5	24.0	16.0
Separated from parents	76.5	76.0	84.0
Total as to age of separation	100.0	100.0	100.0
Under 10 years	6.3	6.0	9.8
10 to 13 years	9.8	9.8	10.5
10 years	1.7	1.7	1.8
11 years	1.3	1.4	0.9
12 years	3.5	3.5	3.1
13 years	3.3	3.2	4.6
14 to 15 years	13.5	13.3	17.5
14 years	6.2	6.1	7.6
15 years	7.4	7.2	9.8
16 to 17 years	19.1	18.6	25.7
18 to 20 years	26.3	26.5	23.4
21 years and over	24.9	25.8	13.2

A little over three-fourths (76.5 per cent) of offenders were separated from parents, or in general had left home, at the time of the commission of their offense. With females the proportion

separated from parents is even larger, practically five-sixths (84.0 per cent). In certain cases children voluntarily left home to go to work or to attend school. But in general there is afforded a sad commentary upon the broken home—the home broken by death, desertion, or separation, and also in greater or less degree the home shattered by family friction and discord, parental unfitness, poverty, or dissatisfaction of some kind with home life. The connection of the disrupted home with delinquency becomes all too obvious.

Separation from parent begins even in the tender years of childhood. Of all separations, 6.3 per cent began under ten years of age. One-sixth (16.1 per cent) had their commencement before fourteen; three-tenths (29.6 per cent), before sixteen; and three-fourths (75.0 per cent), before twenty-one.

Among females the proportions become large at the earliest years. With one-fifth (20.3 per cent), separation took place before fourteen; with almost two-fifths (37.8 per cent), before sixteen; and with not far from nine-tenths (86.8 per cent), before twenty-one.

CHARACTER OF OFFENSES IN RELATION TO AGE OF SEPARATION

In the table on page 238 is given for different offenses the percentage of commitments by sex according to the age at which occurred separation from parents (1923).

Among males leaving home under ten years of age, the proportion is relatively high (above the average) for burglary, general sex offenses, assault, larceny, robbery, and forgery; from ten to thirteen, for possession of stolen property, general sex offenses, burglary, larceny, violation of drug laws, and rape; at fourteen and fifteen, for robbery, burglary, general sex offenses, larceny, possession of stolen property, and violation of drug laws; at sixteen and seventeen, for robbery, burglary, larceny, and rape; from eighteen to twenty, for violation of liquor laws, fraud, homicide, forgery, assault, and robbery; and at twenty-one and over, for embezzlement, fraud, violation of liquor laws, homicide, rape, violation of drug laws, general sex offenses, forgery, and assault. Among females, the proportion leaving home under ten is relatively high for prostitution; from ten to thirteen, for violation of drug and liquor laws; at fourteen and fifteen, for larceny; from eighteen to twenty, for larceny and prostitution; and at twenty-one and over, for violation of drug and liquor laws and prostitution.

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY AGE
OF SEPARATION ACCORDING TO OFFENSE

Sex and Offense	Per Cent of Total						
	Under 16 Years				16 to 17 Years	18 to 20 Years	21 Years and Over
	Total	Un- der 10 Years	10 to 13 Years	14 to 15 Years			
Total	29.7	6.3	9.8	13.5	19.1	26.3	24.9
Male	29.1	6.0	9.8	13.3	18.6	26.5	25.8
Homicide	23.2	4.6	7.6	11.0	16.4	29.7	30.6
Grave	23.8	4.2	7.7	11.9	14.3	31.8	30.1
Lesser	23.0	4.8	7.6	10.5	17.4	28.8	30.8
Assault	29.5	6.8	9.8	12.8	16.8	27.4	26.3
Robbery	33.1	6.5	9.8	16.7	22.9	26.7	17.4
Burglary	35.1	8.1	10.9	16.1	22.6	25.4	16.9
Larceny	31.2	6.6	10.7	13.9	21.0	25.6	22.2
Embezzlement	17.2	3.5	5.6	8.1	16.2	26.3	40.4
Forgery	28.3	6.1	8.5	13.8	14.9	29.4	27.4
Fraud	20.1	4.6	6.9	8.5	14.7	29.7	35.5
Possession of stolen prop- erty	31.9	5.6	12.5	13.8	17.2	20.7	30.2
Rape	26.1	4.9	10.2	11.0	20.0	23.3	30.6
All other sex offenses	33.7	7.2	11.9	14.6	16.6	21.3	28.5
Violation of drug laws.....	29.0	4.8	10.4	13.8	17.2	24.1	29.6
Violation of liquor laws....	20.9	2.8	8.3	9.7	11.8	29.9	37.4
Miscellaneous	26.7	5.8	9.9	10.9	18.0	26.7	28.6
Female	37.8	9.8	10.5	17.5	25.7	23.4	13.2
Larceny and related offenses	32.9	6.0	8.4	18.6	25.7	28.7	12.6
Prostitution	35.2	15.6	7.0	12.5	21.9	28.9	14.1
Violation of drug and liquor laws	37.9	8.6	12.1	17.1	24.3	20.7	17.1
All other and unknown ...	41.8	11.1	11.6	19.1	28.5	17.7	11.9

There is certain correspondence between these ages and the ages in general at which crimes are committed. Crimes of violence or against property for gain begin early when the child is separated from its home.

FAMILY RELATIONSHIPS OF JUVENILE DELINQUENTS

In the following table is given the percentage distribution of juvenile delinquents committed to special institutions, with separate classification for males and females, whites and colored, and for those under sixteen years of age and those sixteen and over, according to the relatives or other persons with whom they were living at the time of their commitment (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO
SPECIAL INSTITUTIONS ACCORDING TO PERSONS WITH WHOM LIVING

Persons with Whom Living	Per Cent Distribution						
	Total	Male	Fe- male	White	Col- ored	Under 16	16 or Over
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Both parents	43.9	48.4	28.5	46.3	28.6	47.8	36.2
Mother and stepfather	6.9	6.4	8.9	6.8	7.9	7.1	6.7
Father and stepmother	3.8	3.9	3.7	4.0	2.9	4.2	3.2
Mother only	16.4	16.1	17.6	15.6	21.4	15.9	17.5
Father only	9.1	9.1	8.9	9.2	8.4	9.1	9.0
Other relatives	7.4	6.4	10.7	6.4	13.6	6.8	8.6
Foster parents	1.5	1.1	2.6	1.4	1.8	1.4	1.6
Other	6.6	4.5	14.0	6.2	9.5	4.9	9.9
Not reported	4.4	4.2	5.1	4.1	5.8	2.9	7.3

The smaller part of juvenile delinquents at the time of their commitment were enjoying a normal family life, or were living with both of their parents. Only a little over two-fifths (43.9 per cent) were having this manner of life. In addition, however, one-tenth (10.7 per cent) were living with a natural parent and a stepparent—more often a mother and a stepfather, or 6.9 per cent, as against 3.8 per cent for those with a father and a stepmother. Thus somewhat over one-half (54.6 per cent) were living either with both parents or with one parent and one stepparent. One-fourth (25.5 per cent) were living with one parent only—more often the mother than the father, or 16.4 per cent as against 9.1 per cent. There were 7.4 per cent living with other relatives, 1.5 per cent with foster parents, and 6.6 per cent in some other way.

A much smaller proportion of girls than of boys were living with both parents, or 28.5 per cent as against 48.4 per cent. A considerably higher proportion of girls were living with other relatives, with foster parents, or in unspecified manner—in some relation other than the natural parental one. A larger proportion of girls were also living with a mother only or with a mother and a stepfather.

A much smaller proportion of colored than of white children were living with both parents, or 28.6 per cent as against 46.3 per cent. A higher proportion is for the most part found for colored children in relations other than the natural parental one.

The younger children, or those under sixteen years of age, have

in general larger proportions with normal parental relations than have the older ones.

In the following table is given the percentage distribution of juvenile delinquents committed to prisons and reformatories, according to general family relationships, classified also by sex and race (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO GENERAL INSTITUTIONS ACCORDING TO PERSONS WITH WHOM LIVING

Person with Whom Living	Per Cent Distribution				
	Total	Male	Female	White	Colored
Total	100.0	100.0	100.0	100.0	100.00
Both parents	37.2	39.1	21.6	42.2	23.8
One parent	19.4	19.7	16.7	16.8	26.2
Other relative	10.9	11.3	7.8	8.7	16.8
Husband or wife	1.7	0.5	11.8	1.7	1.6
Other	26.2	25.0	36.3	28.6	19.9
Not reported	4.6	4.4	5.9	1.9	11.7

The proportion living with both parents (37.2 per cent) and the proportion living with one parent (19.4 per cent) at the time of their offending are alike somewhat smaller for those committed to prisons and reformatories than for those committed to special institutions for juvenile delinquents. The proportion of male delinquents living with wives is, owing to their general youthfulness, very slight; the proportion of female delinquents, however, living with husbands is notable, being a little over one-tenth (11.8 per cent).

Of juvenile delinquents appearing before the juvenile courts in certain cities from one-third to two-thirds, or perhaps even more, have had an abnormal home life, or come from broken homes where one or both parents are dead or where parents are no longer living together. This proportion of offenses against the law committed by children and youth is due in greater or less measure to loss of a parent through death or through divorce, desertion, or separation of one from the other. It is two or three times that for children in general. From one-fourth to two-fifths of juvenile delinquents in general have a parent not living. When one parent is dead, it is much more frequently, sometimes twice as frequently, the father as the mother. In about one case out of twenty, sometimes much oftener, both parents are dead. From one-tenth to one-fourth of delinquent children as a rule have parents between whom there exists separation, divorce, or deser-

tion. In some reform schools the proportions are several times greater.

Of the remainder of juvenile delinquency nearly all is to be attributed to unfavorable or unhappy home conditions or environment, including family discord, absence of one or both parents from home on account of work, etc. To parental neglect is sometimes set down two-thirds or more.

Of boys appearing in juvenile courts in 65 cities (1928) the percentage living with both parents was 71; with parent and stepparent, 7; with mother only, 12; with father only, 5; and otherwise, 5. The respective percentages for girls were 52, 10, 17, 7, and 14.¹

Of juvenile delinquents before the juvenile court in Washington in one year (1924), 47.5 per cent were found to be living with both parents; 12.1 per cent, with friends or relatives; 30.0 per cent, with the mother alone (in 16.6 per cent the father being dead, in 4.9 per cent the parents being separated, in 1.1 per cent the parents being divorced, in 3.0 per cent there being "enforced absence" of father, and in 2.7 per cent the legal father not being known); 5.7 per cent, with a stepfather; 7.2 per cent, with father alone (in 6.2 per cent the mother being dead, and in 1.0 per cent the parents not living together); and 1.4 per cent, with a stepmother.²

CONNECTION OF HOME WITH JUVENILE DELINQUENCY

A very large part, indeed much the larger part, of juvenile delinquency is to be laid to some imperfection or disorder in the home, or to the non-functioning of the home. On the one hand, are to be set down lack of good home, poor home environment, unfavorable home conditions, unhappy home life, parental neglect, etc. On the other hand, is to be placed the breaking up of the home through the absence therefrom of one or both parents, brought about by death, or by separation, divorce, or desertion of parents.

To parents directly and indirectly no small amount of child wrongdoing is to be attributed. Blame may attach to one or to both. There may exist indifference or unconcern towards the well-being of the child, selfishness, physical or moral neglect, unfitness for child direction or management, uninviting home at-

¹ Publications of Children's Bureau No. 200 (Juvenile Court Statistics, 1928), 1930.

² Figures taken from *Washington Star*.

mosphere, or domestic dissension. Parents may be ill-trained, or ill-prepared, or ill-adapted, or actually incompetent for the bringing up of a child. They may be unable or unwilling to understand or appreciate the child's nature. Genuine affection for the child or interest in its activities may be largely wanting. Planning or provision for its coming years may hardly have a place. Real intimacy or companionship or fellowship or comradeship between parent and child may be all but unknown. Outside business and concerns may engage the attention, and may becloud the interests of the child. There may arise or develop downright insensibility to its fate.

In some cases parents may be lax as to the child's behavior or conduct; they may be lenient or overindulgent to its misdoings, and blind to its demerits or delinquencies. With the child any real authority or discipline may come near to being abandoned altogether. Without the hand of the parent to curb, the child may in time come to think that there is no restraining force at all to be reckoned with, or that he need to defer to no outside control.

In other cases an attitude may be taken of too great severity, unbending, harsh, or even tyrannical; there may be little sympathy with the child's actions or with its point of view. Chastisement may be frequent or unpitying. Actual cruelty may be practiced, or mistreatment or abuse. Children who accept this treatment do so only in resentment and bitterness of heart. Perhaps they become hardened in consequence; perhaps sooner or later they are driven from home.

The influence of certain parents upon their children may be positively harmful, perhaps vicious. This may range from indolence or shiftlessness, or ignorance or limited education, to noxious habits or bad morals or looseness of living, perhaps actual criminal tendencies. Intemperance in the parent has in particular always been of serious consequence to the child. In some cities over one-half of juvenile delinquents have been found to come from homes demoralized by alcohol, immorality, delinquency, etc. Parents may be of criminal character, and may have had experience with the penal law. When the parent is a wrongdoer, there is little hope for the child.

Should incompatibility or discord or antagonism exist in the family, especially between parents, with possible bickerings, quarrels, and disputes, the child is placed in a most unhappy position—and all the more so when it may be obliged to take the side of one parent as against the other.

Possibly a child is made the subject of teasing, nagging, or bullying by other children, or favoritism or partiality is displayed to another child, in which case unpleasant effects are likely to be produced, especially upon an unduly sensitive child. In the remarriage of a widowed parent there may result discord or unhappiness or neglect for the child.

When there occurs a breaking up of the home through the failure of the parents longer to live together, it is often the child who is the keenest sufferer, and upon whom are visited the most severe consequences. Among the very poor desertion not infrequently takes the place of formal divorce. Separation of parents, whatever its form, and from whatever circumstances it may result, constitutes one of the most serious of present-day evils; as a contributing factor in juvenile delinquency it cannot be overdrawn.

In the event that the natural breadwinner of a family is, through death or desertion or prolonged illness or incapacitation, no longer to be counted upon, and the responsibility for the family's support falls upon the mother, who may have to go out from the home to work, leaving the care of the child to the ministrations of a neighbor or relative, if indeed to any at all, the case of the child becomes jeopardized, and he stands to lose heavily. When in the home there is provided an inefficient substitute for a real parent, especially some relative, or perhaps a stepparent, or when in general there is no responsible person in the home to mind the child, ill likewise fares his case.

Pernicious effects upon the child are ever possible with the overcrowded home, or with poor domestic economy, or with generally unattractive or unappealing home environment or neighborhood. Overcrowding or congestion may include both that of house and that of room—with lack of necessary privacy perhaps involved. When bitter poverty is also a dweller in the home, discontent is likely to become the more pronounced. The situation is attended with special difficulties when the entire family is going through a state of adjustment to new conditions, as is the case with a foreign-born family new to American ways. Here the child may possibly, in some part from his larger acquaintance with the new land and its language, and from his relatively frequent service as interpreter for his family, assume something of a superior air towards its other members. (No small proportion of foreign-born parents, especially mothers, with children delinquent, are unable to speak English.) In such circumstances, with lessened tractability on the part of the child, parental authority

must needs experience a severe strain, and may possibly have to give way in the process. Another situation of stress for the growing child in the city lies in residence areas which are stagnating or deteriorating, or degenerating, or which are being given over to new uses, or in which families are in a greater or less state of transition—with the general demoralization of customary neighborhood forces and standards.

In nearly all cases where the child is denied its birthright of a normal and proper home, it is the illegitimate one that must suffer most from this lack, and that has the greatest grievance against society. In a sense without parents, it has few to be vitally or constructively concerned in its well-being. It may be shunned and spurned by the world. It may come to feel itself without standing, and an outcast. In such a situation not far off is the road to delinquency.

When a delinquent child is for any reason taken from its home and placed in a foster home, the process is not always attended with the happiest results. Sometimes there arises on one side or the other dissatisfaction, with the outcome in dissension or friction. Placing out of children of delinquent tendencies must always remain a difficult matter. The situation as to homeless children of troublesome nature in general institutions for children offers little better promise. (In certain instances delinquent children placed out in private homes have been found to do well.)

A child without right or wholesome home influences is bound to meet or find other influences which will shape his course and guide his footsteps, possibly in far from beneficial channels. These influences may be of the street or of other public resorts. Away from the home he grows up with little realization of the proper relationship between parent and child, or of what parental solicitude or training means. He has inadequate or weakened conceptions of his responsibility to the small world of his home or to the larger world outside. Too early he learns to look to and to depend upon himself, and to attend to his own wants. In due time, perhaps, he comes to have little regard for the opinion of others, or of any social obligations to the community. Vices may be acquired, perhaps first in a small way, but growing into strength; possibly later there are manifested actual criminal tendencies. If the child goes into remunerative labor at a premature age, he is likewise liable too early to feel his independence of home needs or connections. Too quick an assumption of the bearings of adult manhood and too early an entry upon a

career of self-reliance may lead before long to a spirit of discontent and restlessness, which may in due time turn him from the quiet ways of law-abiding conduct.

Akin to the group of children and youth who before their time feel absolved from further home allegiance are those who precipitately run away from the home to escape its galling confinement or to try their fortunes in a larger sphere. The full number of runaways in the United States cannot be known.¹ Causes of leaving home are varied, generally of a complex order, and often of a trivial nature—desire for more money or for easy money, desire for larger recreation, call of the stage or screen, desire to see the world, misunderstanding or friction or even cruelty in the home, low living standards, and like considerations.

With girls the chief factor in causing delinquency is the more often an unfavorable home; with boys, an unfavorable environment.

¹ There are said to be 60,000 girls who disappear from sight each year.

CHAPTER XXXI

ECONOMIC CONDITION

CONNECTION BETWEEN ECONOMIC CONDITION AND CRIME

Economic factors undoubtedly play a very considerable part in the causation of crime, even though their importance has sometimes been exaggerated or overemphasized. Their influences, both direct and indirect, have as yet had little scientific measurement; statistical data upon the subject in particular have been largely wanting.¹

In the operation of economic factors it is generally, but by no means always, the poorer elements of society upon which press the harder those temptations arising out of considerations of economic character. To the lure of ill-gotten earnings poverty provides the heaviest exposure. It is those with the least of material possessions to whom the provocation is ever nearest to dispossess another for their own necessities. But there are also persons of higher economic gradations, and not falling under the spite of fortune, to whom the incitement to despoil another for their own material gain is no stranger.

Indigence or privation may inspire a desire for the wrongful acquirement of wealth. This may become the more urgent under the stress of general financial depression or of immediate lack of employment. Such attitudes are the more likely to manifest themselves in offenses against property for gain. At the same time chronic want or the repeated failure to secure or hold a job may lead directly to vagrancy, which may in time become of semi-criminal nature. Poverty may itself lead to harmful or vicious means of amusement or indulgence, with possible moral disintegration or weakening of moral fabric. In the presence of great riches, or when riches and poverty are in violent contrast, there may arise on the part of those possessed of but little toward those possessed of much a spirit of resentment, or a rankling feeling of envy, or a sense of bitterness at what is regarded as

¹ Some valuable data, however, have been collected through intensive case studies.

the unequal distribution of wealth—with perhaps the accentuating of any latent propensities towards crime. Especially when wealth is used wrongly, or in ostentation or in unhappy display, such excitation with those denied even the bare necessities of life may possibly find vent in passionate outbursts. Too great wealth may on its part lead to wasteful luxuries, vicious indulgences, dissipation, and debauchery, all with the lowering of moral bars.

For the most part, though always with glaring exceptions, the criminal population is not a class possessed in large degree of the world's goods. The links tying them to society are weak; a large proportion are without home ties; the smaller number are in families owning any considerable amount of property; an appreciable proportion do not have certain or steady jobs, or are not able to find or keep jobs. Many are without friends as well as without money. A criminal career, or perhaps an occasional crime, seems the easiest recourse to which to turn. Some who are unfortunate simply pass into crime.

Upon the causation of crime a consideration that at times has a serious bearing is the absence of means or facilities for the borrowing of money, especially by those with small incomes, to meet some urgent need or to tide one over some emergency. Such means or facilities have been but inadequately developed in the United States. Too often it happens that men who are hard pressed, or who are driven by heartless money-lenders, are pushed over the line into criminal deeds.

All the several factors, in fact, of a social nature that enter into the general economic order to make or keep one's material life at a low level, whether impaired physical or mental condition, lack of or insufficient vocational training, absence of natural bread-winner, want of friendly hand in time of need, or whatever other matter causes the sapping of the strength of life—all these are to be charged with a greater or less degree of responsibility for crime.

There are certain forms of crimes which may issue directly from business opportunities, as embezzlement, forgery, and various forms of fraud, some made the easier because of the range and complexity of modern business. In the case of a crime like embezzlement or peculation, there is often little intention of outright theft at the start, but full intention of repaying at a later time the money taken. As one, however, becomes more and more deeply enmeshed, there may develop a fixed intent to steal. The original purpose may simply have been to meet some domestic needs, perhaps some extraordinary expenditure, as medical bills,

or to pay off some installment which has become due, or to promote some private business or undertaking, perhaps a venture in speculation, or to provide a temporary good time, especially when a feeling exists that one's salary is too low. Along with these influences is the inadequate examination of books and records of financial institutions, which permits the mishandling of funds committed to one's care. Other instances are also to be found of wrongdoing when trust is carried too far.

A large part of female offenders, especially with respect to sex offenses, are drawn from low-paid occupations. Those that have been found to be most dangerous to women from a moral standpoint are domestic service and work on small wages in factories, stores, and offices. The connection of low wages with prostitution is clear, though often made to cover too much. It is to be remembered that a certain proportion of these groups are of inferior intellectual order and incapable of large economic earnings.

A special phase of the bearings upon crime of financial considerations is the deliberate encouragement and cold-blooded commercializing of certain forms of wrongdoing or vice, especially in catering to the baser instincts—sometimes by themselves, sometimes in connection with other vicious institutions—or organized business undertakings operated for the money profits to be made from them by their promoters. Gambling and prostitution would be vastly reduced but for their commercial exploitation.

UNEMPLOYMENT IN RELATION TO CRIME

In the table on page 249 is given the percentage distribution of persons committed to prisons and reformatories, and of males and females separately, according to the time of unemployment just before the commission of their offenses (1923).¹

A little over three-tenths (31.0 per cent) of offenders were without employment immediately prior to their misdoings. Of females about two-fifths (38.7 per cent) were without employment. Unemployment without doubt has prevailed to an appreciably larger extent among the prison population than with the population at large. Some of the unemployment of criminals, however, as may be understood, is of quite voluntary character. At the same time with many any announced employment is

¹ The statistics in this chapter, unless otherwise indicated, are taken from reports of Census Bureau—Children under Institutional Care: 1923, 1927; The Prisoner's Antecedents: 1923, 1929.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO UNEMPLOYMENT BEFORE OFFENSE

Time Unemployed before Crime	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Employed at time of crime	69.0	69.4	61.3
Unemployed at time of crime	31.0	30.6	38.7
Under 2 weeks	3.8	3.9	3.2
2 weeks but less than 1 month	5.2	5.2	4.9
1 month	5.1	5.1	4.2
2 months	4.2	4.2	4.4
3 to 5 months	5.9	5.8	7.9
6 months but less than 1 year	3.3	3.3	4.4
6 to 8 months	2.8	2.8	3.5
9 months but less than 1 year	0.5	0.5	0.9
1 year and over	3.3	3.1	9.8
1 year	1.6	1.5	4.1
2 years and over	1.7	1.5	5.7

largely of superficial or of nominal nature, and rather a cloak to cover evil doings.

Among those without employment at the time of the commission of their offenses, no small proportion had been without it for a considerable period of time. Over one-fifth (21.8 per cent) had been unemployed for one month or more; one-sixth (16.7 per cent), two months or more; one-eighth (12.5 per cent), three months or more; 6.6 per cent, six months or more; 3.3 per cent, one year or more; and 1.7 per cent, two years or more. (Proportions with the longer periods are greater for females.)

In the following table is presented the percentage distribution of commitments to prisons and reformatories, and for males and females, according to the time that unemployment existed during the whole year preceding the crime in question (1923).

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO UNEMPLOYMENT IN PRECEDING YEAR

Time Unemployed during Preceding Year	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Unemployed during year			
3 months or less	68.5	69.1	55.0
3 to 6 months	16.1	16.1	15.9
6 to 9 months	7.4	7.2	12.3
9 to 12 months	8.0	7.6	16.8

Over two-thirds (68.5 per cent) were unemployed three months or less during the year preceding the commission of their crimes, one-sixth (16.1 per cent) from three to six months, not quite one-twelfth (7.4 per cent) from six to nine months, and a like proportion (8.0 per cent) from nine to twelve months. Almost one-third (31.5 per cent) proved to be unemployed over three months. Of females, 12.3 per cent were unemployed from six to nine months, and 16.8 per cent from nine to twelve months. There were 45.0 per cent without employment for more than three months.

The average length of time of unemployment during the preceding year for both sexes was about one-fourth of the year (13.75 weeks). (With industrial wage-earners about one-tenth of working time a year seems to be lost through idleness, not counting time lost through sickness or labor disputes.)¹ There is thus evident a real shortage of employment among those who have offended against the law.

To a large extent employment with law-breakers is uncertain, fluctuating, and irregular. Not a few have dead-end jobs, or jobs with little to attract or to stir ambitions.

CHARACTER OF OFFENSES IN RELATION TO UNEMPLOYMENT

In the table on page 251 is given for different offenses by sex the percentage among commitments to prisons and reformatories according to time of unemployment just prior to the commission of the offenses, and the percentage according to the time of unemployment during the preceding year (1923).

With respect to the matter of unemployment at the time of commission of crime, there is for males a relatively high proportion (above the average) in the case of burglary, robbery, violation of drug laws, larceny, forgery, and possession of stolen property. Homicide seems of more serious nature with unemployment. Among those unemployed under one month the proportion is relatively high for burglary, robbery, forgery, and larceny; from one to three months, for burglary, possession of stolen property, robbery, forgery, larceny, and violation of drug laws; from three to six months, for burglary, robbery, larceny, violation of drug laws, and forgery; from six months to one year, for burglary, forgery, violation of drug laws, robbery and larceny; for one year and over, for violation of drug laws, possession

¹ See Report of Census Bureau—The Prisoner's Antecedents: 1923, 1929, p. 38.

Sex and Offense	Per Cent of Total										
	Em- ployed at Time of Crime	Unemployed Immediately before Crime						Unemployed during Preceding Year			
		Total	Under 1 Month	1 to 2 Months	3 to 5 Months	6 but Less than 1 Year	1 Year and Over	3 Months or Less	3 to 6 Months	6 to 9 Months	9 to 12 Months
Total	69.0	31.0	9.1	9.3	5.9	3.3	3.3	68.5	16.1	7.4	8.0
Male	69.4	30.6	9.1	9.4	5.8	3.3	3.1	69.1	16.1	7.2	7.6
Homicide	87.3	12.7	3.6	3.7	2.0	2.0	1.4	80.6	11.7	4.1	3.7
Grave	84.5	15.5	3.7	5.4	2.5	2.2	1.7	79.6	10.9	4.2	5.2
Lesser	88.6	11.4	3.6	2.9	1.8	1.9	1.2	81.0	12.1	4.0	3.0
Assault	79.7	20.3	6.7	6.2	3.3	2.1	2.0	76.0	14.1	5.1	4.9
Robbery	60.6	39.4	13.1	11.1	7.5	3.9	3.8	66.6	17.4	6.9	9.1
Burglary	53.6	46.4	13.2	14.9	9.3	5.3	3.8	56.3	21.7	11.0	11.0
Larceny	64.9	35.1	11.3	10.7	6.9	3.6	2.7	64.1	18.3	9.4	8.2
Embezzlement	92.3	7.7	1.8	2.3	2.3	0.5	0.9	88.5	7.3	1.4	2.8
Forgery	65.3	34.7	11.8	10.8	5.9	4.4	1.8	70.6	16.3	7.7	5.5
Fraud	78.4	21.6	7.6	6.2	4.1	1.4	2.4	80.4	9.6	5.4	4.6
Possession of stolen property	68.0	32.0	7.9	11.2	5.3	3.3	4.3	74.0	12.8	4.9	8.2
Rape	85.4	14.6	5.1	4.8	2.6	0.7	1.4	79.7	12.0	4.3	3.9
All other sex offenses	85.1	14.9	4.7	5.1	2.8	0.8	1.5	82.7	9.0	3.8	4.5
Violation of drug laws	64.8	35.2	6.9	10.1	6.5	4.0	7.7	68.3	14.3	6.1	11.4
Violation of liquor laws	81.7	18.3	2.8	5.2	4.0	2.1	4.2	75.4	13.1	4.6	6.9
Miscellaneous	75.4	24.6	8.1	7.4	4.7	2.1	2.4	71.2	15.9	5.9	6.9
Female	61.3	38.7	8.2	8.6	7.9	4.4	9.8	55.0	15.9	12.3	16.8
Larceny and related offenses	58.2	41.8	8.2	13.4	6.0	6.0	8.2	60.5	13.7	12.1	13.7
Prostitution	43.0	57.0	10.9	11.7	13.3	7.0	14.1	40.9	15.5	16.4	27.3
All other and unknown	64.2	35.8	8.3	7.6	6.9	3.1	9.7	50.7	20.1	12.9	16.2

of stolen property, violation of liquor laws, burglary, and robbery. Among females, the proportion is relatively high for prostitution among all groups unemployed. It is relatively high for larceny among those unemployed from one to three months and from six months to one year.

During brief periods of unemployment criminal activities appear to turn most strongly to crimes against property for gain, especially those attended with violence, evidently regarded as the quickest way to profit.

With respect to the matter of unemployment during the year preceding the commission of the offense, there are, with males, among those unemployed three months or less relatively high proportions for embezzlement, homicide, fraud, rape, assault, violation of liquor laws, possession of stolen property, and forgery; among those unemployed between three and six months, for burglary, larceny, robbery, and forgery; among those unemployed from six to nine months, for burglary, larceny, and forgery; and among those unemployed between nine and twelve months, for violation of drug laws (this offense having a notable proportion only here), burglary, robbery, larceny, and possession of stolen property. With females, the proportion is relatively high for the first period in the case of larceny, and for the last two periods in the case of prostitution. The longer the period of unemployment during the preceding year, the more likely appear offenses against property for gain, accompanied with violence. With unemployment in general such offenses seem peculiarly associated.

AMOUNT OF PREVIOUS EARNINGS OF OFFENDERS

In the table on page 253 is given the percentage distribution of persons committed to prisons and reformatories, and of males and females separately, according to the amount of full-time weekly earnings received when they were last employed (1923).

There exists a certain connection between crime and the amount of one's wages. The previous earnings of prisoners have in general been low. By 5.5 per cent less than \$10 a week was received during the last employment engaged in prior to the commission of offense. By a little over three-tenths (31.6 per cent) less than \$20 was received, and by a little over three-fifths (61.4 per cent) less than \$30; only one-tenth (10.1 per cent) were receiving \$50 or more.¹

¹ Possibly to a certain extent are included proceeds of booty collected.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
BY PREVIOUS EARNINGS

Previous Weekly Earnings	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Under \$10	5.5	4.6	27.3
Under \$5	0.4	0.3	2.7
\$5 to \$9	5.1	4.3	24.6
\$10 to \$19	26.1	25.0	53.0
\$10 to \$14	9.7	8.8	32.7
\$15 to \$19	16.4	16.3	20.3
\$20 to \$29	29.8	30.5	11.8
\$20 to \$24	15.6	16.0	6.9
\$25 to \$29	14.2	14.6	4.9
\$30 to \$39	19.7	20.3	4.3
\$40 to \$49	8.8	9.1	1.9
\$50 to \$74	6.8	7.0	1.4
\$75 and over	3.3	3.4	0.3

Previous earnings of females were strikingly low. Over one-fourth (27.3 per cent) were receiving under \$10, and four-fifths (80.3 per cent) under \$20.

Average earnings of males were \$30. (In 1923 the average wage of union labor was \$44; but this had reference only to workers who were skilled, were engaged only in industry, and were employed in large cities. The average for males gainfully employed in manufacturing establishments is estimated at \$26.) Among prisoners are doubtless to be included some groups with previous higher incomes than those of mere wage-earners, a circumstance which raises the average for prisoners.¹ A very important consideration in the entire matter is that among prisoners unemployment, with consequent idleness, has prevailed to an appreciably greater degree than among ordinary workers. The one has been without work on the average for about one-fourth of the year; the other is without it only about one-tenth of the year.

The previous wages of prisoners, moderate in general as they are, do not appear to compare very unfavorably with those received on the whole in industry in the United States. Low wages are of restricted influence in the causation of crime, and are to be regarded as only one of several factors. The factor of small income, however, and of low living levels in consequence—and

¹See report of Census Bureau—The Prisoner's Antecedents: 1923, 1929, p. 33.

especially of continued lack of work, with prolonged and disintegrating idleness in accompaniment with it—has a definite bearing upon crime. Economic conditions afford a real, even though a limited, incentive thereto.

CHARACTER OF OFFENSES IN RELATION TO PREVIOUS EARNINGS

In the following table is given for different offenses the percentage of male and of female commitments to prisons and reformatories according to amount of previous wages (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO PREVIOUS EARNINGS BY OFFENSE

Sex and Offense	Per Cent of Total						
	Under \$10	\$10 to \$19	\$20 to \$29	\$30 to \$39	\$40 to \$49	\$50 to \$74	\$75 and Over
Total	5.5	26.1	29.8	19.7	8.8	6.8	3.3
Male	4.6	25.0	30.5	20.3	9.1	7.0	3.4
Homicide	5.4	26.4	29.2	18.2	9.4	7.9	3.4
Grave	8.8	24.7	30.4	16.4	9.0	7.4	3.3
Lesser	4.0	27.2	28.7	19.0	9.6	8.1	3.4
Assault	4.3	26.6	35.3	20.3	7.3	4.6	1.6
Robbery	2.5	19.0	37.8	23.4	9.6	5.5	2.2
Burglary	6.1	30.3	32.6	18.5	7.0	4.0	1.5
Larceny	5.9	26.6	31.8	20.3	7.0	5.6	2.7
Embezzlement	0.9	9.7	15.7	22.7	15.7	19.9	15.3
Forgery	3.5	22.2	25.8	19.8	11.1	11.4	6.3
Fraud	2.2	11.5	19.6	20.7	15.2	14.8	15.9
Possession of stolen prop- erty	1.4	12.8	28.0	26.7	13.9	9.8	7.4
Rape	5.5	27.1	30.2	22.7	9.7	4.2	0.6
Other sex offenses.....	2.4	20.9	31.2	23.3	9.4	10.0	2.8
Violation of drug laws....	1.2	18.3	31.5	22.5	12.1	10.2	4.2
Violation of liquor laws...	7.8	38.7	22.3	15.1	8.4	4.5	3.1
Miscellaneous	3.3	21.0	28.5	21.2	11.2	10.0	4.8
Female	27.3	53.0	11.8	4.3	1.9	1.4	0.3
Larceny and related of- fenses	28.1	45.6	13.2	5.3	1.8	4.4	1.8
Prostitution	21.6	60.3	6.9	9.5	0.9	0.9	—
All other and unknown...	28.9	56.3	10.8	1.4	2.2	0.4	—

Among male prisoners previously earning under \$10 a week, the proportion is relatively high (above the average) for violation of liquor laws, burglary, larceny, rape, and homicide; among those earning from \$10 to \$19, for violation of liquor laws, burglary, rape, larceny, assault, and homicide; among those earning

from \$20 to \$29, for robbery, assault, burglary, larceny, violation of drug laws, and general sex offenses; among those earning from \$30 to \$39, for possession of stolen property, robbery, general sex offenses, embezzlement, rape, violation of drug laws, and fraud; among those earning from \$40 to \$49, for embezzlement, fraud, possession of stolen property, violation of drug laws, forgery, rape, robbery, homicide, and general sex offenses; among those earning from \$50 to \$74, for embezzlement, fraud, forgery, violation of drug laws, general sex offenses, possession of stolen property, and homicide; and among those earning \$75 or over, for fraud, embezzlement, possession of stolen property, forgery, and violation of drug laws.

In the case of females the proportion among those previously earning under \$10 a week is relatively high for larceny; among those earning from \$15 to \$19, for prostitution; among those earning from \$20 to \$29, for larceny; among those earning from \$30 to \$39, for prostitution and larceny; among those earning over \$50, for larceny.¹

Offenses characterized by violence are the more pronounced with the smaller earnings. With increased earnings, such crimes tend to give way to those of quieter and more subtle nature. Violation of liquor laws seems to attend the smaller earnings, and violation of drug laws the larger.

POVERTY IN HOME IN RELATION TO JUVENILE DELINQUENCY

The poverty of the parent has an important bearing upon the possible delinquency of the child. If the parents are employed away from home during the day, there is little oversight or restraint for the child. The street and neighborhood resorts, good and bad, take the place of parental direction. The child is left to its own devices; and, not knowing right from wrong, may easily follow the wrong. Unhappy economic conditions at home may sometimes even incite a child to leave and to strike out for himself—and perhaps to enter upon dangerous ways. When homes lack even the barest necessities of life, there are added temptations to steal, even if only for money for craved amusement. In Chicago three-fourths of delinquent boys and nine-tenths of delinquent girls are said to come from the lowest financial groups—families with inferior homes, bad housing, in-

¹In some cities two-thirds or more of prostitutes are reported to have had previous earnings of less than \$10 a week, and three-fourths or more of less than \$15.

adequate recreation, etc.¹ In certain cities one-half, or perhaps more, of delinquent children are from families known to some social agency, including charitable societies, family welfare societies, etc.² Families that are economically dependent have in general more than their share of delinquent children.

CHILD EMPLOYMENT IN RELATION TO CRIME

Premature child labor likewise has a notable part in the causation of delinquency and crime—in reverse order from the situation as to adults. Children engaged in remunerative tasks are more likely to go wrong than are children taken care of and provided for in their own homes or in attendance at school. Dangers are all the greater if there is no real home. Children at work, still in the impressionable years of life, are removed from the restraints and protection of the home. They feel themselves entitled to the privileges of grown-ups, without realization of possible missteps before them. At times when tired or exhausted after the day's labor, they may seek amusements imperiling or disintegrating to moral character, or dulling to the conscience. Perhaps in time finding their early experiences at money making, at first possibly hailed with joy, have not taken them very far, but have rather left them in blind-alley callings, and now wearied and discouraged, they are prepared to seek an outlet in a roving life, which may become that of the vagrant with its semi-criminal tendencies. Street trades and night occupations, often with irregular hours, provide corrupting influences, and open ready associations with evil; not far off may lie vagrancy, gambling, petty pilfering, immoral behavior.

The connection of premature employment of children with wrongdoing is shown in the table on page 257, in which is given the percentage of juvenile delinquents, classified also as to older and younger age, and as to males and females, committed to special institutions and to general prisons and reformatories, according to whether they were employed immediately prior to their commitment, whether they were not employed at such time but had been employed at a previous time, or whether they had never been employed (1923).

One-fifth (19.6 per cent) of juvenile delinquents are found to have been employed at the time of the commission of their offenses, while one-sixth (16.5 per cent) had been employed at

¹ S. P. Breckenridge and Edith Abbott, *Delinquent Child and Home*, 1912.

² Children's Bureau Publications, No. 196 (*Youth and Crime*), 1930.

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO DIFFERENT INSTITUTIONS ACCORDING TO PREVIOUS EMPLOYMENT

Institution, Age, and Sex	Per Cent of Total		
	Employed	Previously Employed	Never Employed
Total	19.6	16.5	63.9
Institutions for juvenile delinquents	15.7	14.1	70.2
Under 14 years	2.2	3.3	94.5
14 and 15 years	13.1	11.2	75.7
16 years and over	31.3	27.5	41.3
Prisons and reformatories	58.0	40.3	1.7
Under 16 years	—	—	—
16-17 years	57.5	40.7	1.8
Male	18.4	14.9	66.7
Institutions for juvenile delinquents	14.1	11.8	74.2
Under 14 years	2.0	3.0	95.0
14 and 15 years	12.6	9.2	78.2
16 years and over	31.5	26.5	42.0
Prisons and reformatories	56.3	42.0	1.7
Under 16 years	—	—	—
16-17 years	56.1	42.1	1.8
Female	24.2	22.8	53.1
Institutions for juvenile delinquents	21.9	22.7	55.4
Under 14 years	4.7	6.0	89.3
14 and 15 years	15.0	18.9	66.1
16 years and over	30.8	29.4	39.8
Prisons and reformatories	74.1	24.7	1.2
Under 16 years	—	—	—
16-17 years	70.7	28.0	1.3

some previous time. In other words, considerably over one-third (36.1 per cent) of juvenile delinquents had been wage-earners before their wrongdoing. Of those committed to prisons and reformatories very nearly all (98.3 per cent) had had previous employment, practically three-fifths (58.0 per cent) having had it at the time of the commission of their offenses. For those committed to special institutions for juvenile delinquents the proportion having had previous employment is three-tenths (29.8 per cent)—for those sixteen years of age or over almost three-fifths (58.8 per cent).¹

¹ Of all children from ten to fifteen years of age (1920), 8.5 per cent are gainfully employed—of boys 11.3 per cent, and of girls 5.6 per cent. Of males in the general population who are gainfully employed, 9.9 per cent are under twenty years of age; and of females, 20.6 per cent. Abstract of Fourteenth Census: 1920, 1923.

There is a notably high proportion of female juvenile delinquents who have had previous occupation. Almost one-half (47.0 per cent) of them had been gainfully occupied before the commission of their offenses—the proportion for males being one-third (33.3 per cent). Among females in special institutions the proportion is little less (44.6 per cent). Of those in prisons and reformatories about three-fourths (74.1 per cent) were actually employed when their offenses were committed.

In practically all investigations delinquency is found to be several times as great among children at work as among children at home or in school, in certain cases the ratio being reported as eight or nine times as great with boys of the former group as with boys of the latter, and perhaps even greater with respect to girls.

PREVIOUS OCCUPATIONS OF OFFENDERS

Accurate and trustworthy statistics as to previous occupation of prisoners are very difficult to secure. Statements upon the subject unless carefully analyzed and verified are likely to be confusing and misleading. Consideration of this question is entirely omitted in the report on prisoners of the Census Bureau for 1923.¹

¹ Certain figures from the report of the Census Bureau for 1910 may be given, for whatever value they may possess. Farmers and farm laborers are found to make a relatively small contribution to the prison population. While farmers constitute 18.6 per cent of the general population, they constitute only 3.3 per cent of commitments to prison. The respective percentages for farm laborers are 14.8 and 2.9. A particular reason for the situation with these two groups is that they are relatively little subject to imprisonment for infraction of local ordinances or other minor offenses, as is the case with city dwellers. With respect to certain principal offenses, proportions of commitments for particular occupational groups which are materially above the average for all groups taken together may indicate in some measure the relative contribution, or relative tendency or liability, of such groups to different forms of crimes—though figures here are to be taken with the greatest degree of caution. With males, in the case of grave homicide the percentage (0.2 for all occupational groups) is 3.9 for policemen and other peace officers, 1.2 for farmers, 1.2 for farm laborers, 0.8 for lumber mill operatives, 0.7 for builders and contractors, 0.7 for stenographers, 0.6 for authors, editors, and reporters, 0.6 for hotel and restaurant keepers, 0.6 for lawyers, 0.6 for mechanics, 0.5 for electric railway conductors, 0.5 for electric railway motormen, 0.5 for harness makers, and 0.5 for merchants. In the case of lesser homicide the percentage (0.4) is 7.9 for policemen and other peace officers, 3.8 for teachers, 2.6 for physicians, 2.4 for farmers, 2.0 for builders and contractors, 1.9 for farm laborers, 1.6 for lumber mill operatives, 1.2 for mechanics, 1.1 for electric railway motormen, and 1.0 for hotel and restaurant keepers. In the case of assault

In all investigations of the subject of women and crime there seems little evidence of an increase of female offenders from the

the percentage (4.8) is 18.0 for brewery and distillery operatives, 12.6 for policemen and other peace officers, 9.4 for lumber mill operatives, 8.6 for builders and contractors, 8.5 for mine workers and quarrymen, 8.5 for slaughterhouse workers, 8.2 for electric railway motormen, 7.7 for farmers, 7.4 for porters and like workers, 7.0 for tanners, 6.7 for electric railway conductors, 6.6 for general factory operatives, and 6.4 for saloon keepers and bar tenders. In the case of robbery the percentage (0.4) is 1.6 for laundry workers, 1.0 for boot and shoe operatives, 1.0 for coopers, 1.0 for electricians, 1.0 for electric railway conductors, and 1.0 for railway engineers and firemen. In the case of burglary the percentage (2.0) is 6.9 for messenger, office, and errand boys, 6.5 for laundry workers, 6.1 for electricians, 5.4 for railway engineers and firemen, 5.2 for artists, 4.9 for furniture workers, 4.8 for mechanics, 4.5 for designers and like workers, 4.4 for lumber mill operatives, 4.3 for actors and showmen, and 4.2 for domestic servants. In the case of larceny the percentage (9.0) is 30.2 for messenger, errand, and office boys, 22.0 for newsboys, 15.8 for laundry workers, 15.7 for accountants, bookkeepers, and cashiers, 15.4 for actors and showmen, 15.1 for porters and like workers, 14.9 for electricians, 14.8 for bankers, 14.8 for domestic servants, 14.4 for artists, 14.4 for designers and like workers, 13.9 for salesmen, 13.8 for clerks, 13.5 for clothing makers, and 13.3 for express agents and expressmen. In the case of fraud the percentage (2.0) is 11.3 for bankers, 11.1 for insurance agents, 8.4 for accountants, bookkeepers, and cashiers, 7.6 for teachers, 7.2 for engineers and surveyors, 7.2 for mechanics, 6.8 for commercial travelers, 5.4 for stenographers, 5.3 for physicians, 4.9 for street railway motormen, 4.6 for builders and contractors, 4.5 for glassworkers, and 4.2 for clerks. In the case of forgery the percentage (0.5) is 12.1 for stenographers, 10.7 for accountants, bookkeepers, and cashiers, 9.9 for engineers and surveyors, 7.2 for authors, editors, and reporters, 6.7 for teachers, 6.2 for lawyers, 4.3 for bankers, 4.1 for insurance agents, 3.8 for designers and like workers, 2.5 for builders and contractors, 2.5 for clerks, 2.5 for electricians, 2.5 for salesmen, 2.4 for railway engineers and firemen, 2.2 for physicians, 2.2 for telephone and telegraph operatives, 1.9 for commercial travelers, and 1.8 for artists. In the case of rape the percentage (0.3) is 1.9 for teachers, 1.6 for laundry workers, 1.2 for mechanics, 1.2 for railway engineers and firemen, 1.1 for farmers, 1.1 for musicians, 0.9 for bankers, 0.9 for farm laborers, 0.9 for physicians, 0.8 for actors and showmen, 0.8 for brewery and distillery operatives, 0.8 for electricians, 0.8 for janitors, and 0.8 for policemen and other peace officers. In the case of fornication the percentage (0.4) is 1.5 for artists, 1.3 for musicians, 1.3 for stenographers, 1.2 for porters and like workers, 1.1 for army and navy service, 1.1 for laundry workers, 1.1 for saloon keepers and bar tenders, 1.1 for electric railway motormen, 1.0 for paper hangers, and 1.0 for teachers. In the case of drunkenness and disorderly conduct the percentage (52.6) is 74.7 for tanners, 74.1 for army and navy service, 68.1 for hat makers, 68.0 for foresters and lumbermen, 67.3 for masons, 67.2 for stonecutters, 66.1 for plasterers, 65.7 for textile mill operatives, and 65.2 for coopers. In the case of vagrancy the percentage (10.5) is 38.9 for electric railway conductors, 16.2 for mechanics, 15.2 for railway flagmen and like workers,

so-called new occupations of women. In an investigation of women wage-earners by the Federal Government in 1910¹ it was found that the occupations involving special moral hazard to women were domestic service, work of waitresses, low-grade factory work, certain forms of nursing work, and cheaper stenographic work.

In a similar investigation of child wage-earners² it was found that of delinquent boys appearing before juvenile courts in certain cities or placed in certain institutions, a little over one-fifth (21.8 per cent) had been engaged at the time of their offending as newsboys, and a little over one-sixth (17.8 per cent) as errand boys—or practically two-fifths in these two occupations. In addition, 7.3 per cent had been engaged in vehicular delivery service, 4.2 per cent in stores and markets, and 2.6 per cent in telegraph messenger service. From these five occupations came somewhat over one-half of all the juvenile delinquents. Of girl delinquents considerably over one-half (54.0 per cent) had been engaged in domestic service—practically one-third (32.2 per cent) in private homes. Most of the remainder had been in low-paid industries of various kinds.

The character of occupation has a direct connection with the boy's delinquency. In the foregoing inquiry the percentage of cases having such connection among the leading occupations is as follows: street venders, 52.0; errand and delivery boys, 38.3; newsboys and bootblacks, 37.2; domestic servants,

14.9 for domestic servants, 13.2 for slaughterhouse workers, 13.1 for harness makers, 13.0 for general railway workers, 12.9 for musicians, 12.6 for bakers, 12.4 for actors and showmen, and 12.3 for peddlers. In the case of violation of liquor laws the percentage (1.6) is 25.7 for hotel and restaurant keepers, 16.8 for saloon keepers and bar tenders, 8.5 for merchants, 6.1 for lumber mill operatives, 5.3 for farmers, 4.5 for brewery and distillery operatives, and 3.8 for teachers. In the case of malicious mischief and trespassing the percentage (2.2) is 5.3 for brewery and distillery operatives, 4.9 for electric railway motormen, 3.7 for mine workers and quarrymen, 3.7 for railway conductors and brakemen, 3.4 for boot and shoe operatives, and 3.4 for electricians. In the case of offenses peculiar to children the percentage (1.4) is 23.0 for messenger, errand, and office boys, 19.5 for newsboys, 4.0 for deliverymen, and 3.5 for factory operatives. Among commitments of females 67.6 per cent had been previously engaged in domestic service, though persons in this group in the general population constitute only 16.2 per cent. See *Prisoners and Juvenile Delinquents in the United States: 1910, 1918*, p. 150.

¹ 61st Cong., 2nd sess., Senate Document 645, 1911, Report on Condition of Woman and Child Wage-earners in the United States, vol. xv, Relation between Occupation and Criminality of Women.

² *Ibid.*, vol. viii, Juvenile Delinquency and Its Relation to Employment.

28.0; messenger boys, 26.3; iron and steel workers, 25.9; workers in stores and markets, 19.3; workers in amusement resorts, 17.3; drivers or general helpers, 14.9. In practically all occupations larceny appears the chief offense; it is followed by vagrancy, disorderly conduct, gambling, malicious mischief, incorrigibility, and truancy. With street trades vagrancy, together with begging, is notable; and with messenger service, immorality. Much of the delinquency is regarded as ascribable to opportunities for wrongdoing in the absence of supervision. Of the offenses of errand and delivery boys nine-tenths is larceny, most being against their employers.

In a number of cities larceny is found with especial frequency among office boys, errand boys, and messenger boys. In some instances over five-sixths of juvenile delinquents having employment are found with "dead-end" jobs. Among skilled workers in general juvenile delinquents are relatively few. In certain cities juvenile delinquency is from five to seven times as great among boys in street trades as among boys in school. In some cities one-tenth of newsboys have delinquency records. In many instances domestic service is found to afford special opportunities for larceny, besides immorality, for girls. In the occupations already mentioned as being the ones in which delinquent females were once engaged, the offenses committed are largely as to sex.

CHAPTER XXXII

EDUCATION

CONNECTION OF EDUCATION WITH CRIME

Much of the criminal population, or of that segment of it which comes to be confined in prisons, is characterized by limited education or schooling, and some part by all but total absence of these things. To some extent such may be said to be concomitants, or even ancillaries, of crime. With lack of education may well be included, in greater or less degree, absence of moral or religious instruction. A considerable portion of crime is directly or indirectly induced from impulsiveness, or from lack of self-control, or from a turbulent or headstrong or untamed disposition on the part of the offender, much of which could be restrained or held in check by the training or self-mastery which education is assumed to provide; or from anti-social attitudes, which through education are the more likely to come under modification or subjection—apart from the stimulation, excitation, and inspiration to better things that may be expected to arise from education.

The ignorant and poorly educated are, furthermore, the more likely to be of the lower economic levels—a circumstance which may have some influence upon criminal movements. Finally, it is the uncontrolled child, or the one likely later to develop criminal tendencies, whose schooling does not proceed far.

For the accomplishment of certain forms of crime, however, some degree of education is useful, or even necessary. Such is especially the case with crimes involving planning or premeditation, and above all involving calculation. In all penal institutions are to be found some representatives of the educated classes, or even of the professional or highly placed business classes. It is to be remembered, in addition, that the smarter, shrewder, more clever criminals, whose dangerous potentialities may be intensified through the acquisition of education, or who may utilize whatever education they have to further their evil ends, are the ones who can most readily avoid the clutches of the law and escape apprehension altogether.

EXTENT OF EDUCATION AMONG OFFENDERS

In the following table is given the percentage distribution of persons committed to prisons and reformatories according to the general extent of their education, with corresponding percentage for the general population twenty-one years of age and over, and with the ratio for each group per 1,000,000 of the general population (1923).¹

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO EXTENT OF EDUCATION

Educational Status	Per Cent Distribution of General Population	Commitments	
		Per Cent Distribution	Ratio per 1,000,000 of General Population
Total	100.0	100.0	284
Illiterate	7.1	10.7	427
Able to read and write.....	92.9	89.3	273
Last school attended—			
Elementary school	61.1	67.5	314
High school	25.1	15.4	174
College	6.7	3.4	143
School not reported.....	—	3.0	—

A relatively high proportion of imprisoned offenders have little or no education, or are unable to read and write. Practically one-tenth (10.7 per cent) are illiterate, a proportion considerably in excess of that of the general population over twenty-one years (7.1 per cent). (As a matter of fact, this latter proportion should be rather 4.6 per cent, or that with reference to the general population between fifteen and thirty-four years of age, which is the age of most prisoners.) The ratio with respect to general population is 427 for those illiterate, as against 273 for those able to read and write. At all stages of education after the elementary school, prisoners show an appreciably lower rating than does the general population.

In the following table is given the percentage distribution of commitments to prisons and reformatories, and for males and females separately, according to attendance at educational institutions in more detailed form (1923).

¹The statistics in this chapter, unless otherwise indicated, are taken from reports of Census Bureau—Children under Institutional Care: 1923, 1927; The Prisoner's Antecedents: 1923, 1929.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO ATTENDANCE AT EDUCATIONAL INSTITUTIONS

Educational Status	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Illiterate	10.7	10.8	8.5
Able to read and write.....	89.3	89.2	91.5
Last school attended:			
Elementary school	67.5	67.4	69.1
First or second grade.....	6.0	6.2	3.8
Third or fourth grade	14.9	15.0	12.9
Fifth or sixth grade.....	18.5	18.4	20.4
Seventh or eighth grade.....	28.1	27.9	31.9
High school	14.4	14.3	16.1
Trade school	1.0	1.1	0.6
College	3.4	3.4	2.8
School not reported.....	3.0	3.0	2.9

Over two-thirds (67.5 per cent) of offenders have had their education limited to one of elementary character. A little over three-fifths (61.5 per cent) have reached the third or fourth grade, a little under one-half (46.6 per cent) the fifth or sixth, and three-tenths (28.1 per cent) the seventh or eighth. About one-seventh (14.4 per cent) have had some high school education. There are 1.0 per cent who have attended a special trade school. College attendance has been the experience of 3.4 per cent. Female offenders have generally a somewhat greater degree of education than male, except as to attendance at college or trade school.

It is probable that education among prisoners exists to an even less extent than the foregoing figures would indicate (based largely upon the prisoners' own statements). Many prisoners, furthermore, are of a comparatively young age, or at a time of life when education is most widespread. It is evident that the schools are not reaching or having the hold upon the children of the land that they should.¹ It is to be remembered that these

¹Of 801 inmates at the State reformatory at Elmira, New York, whose records had been kept down to 1926, 1.4 per cent were illiterate; 10.2 per cent could barely read and write; 31.1 per cent had reached the fifth or sixth grade; 19.2 per cent had reached the sixth or seventh; 13.4 per cent had reached the seventh or eighth; 9.8 per cent had graduated from common school; 3.9 per cent had reached the first year of high school; 1.4 per cent had reached the second; 0.6 per cent had reached the third; and 0.4 per cent had graduated from high school. Report, 1927.

figures relate only to convicted law-breakers, and not to those who are never caught.

EXTENT OF SCHOOLING AMONG JUVENILE DELINQUENTS

In the following table is given the percentage illiterate among juvenile delinquents committed to special institutions, classified by race and sex, with corresponding figures for the general population from ten to nineteen years of age (1923).

PERCENTAGE ILLITERATE AMONG JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS

Race and Sex	Per Cent of Total	
	Juvenile Delinquents	General Population
Total	3.5	2.6
White	2.4	1.3
Colored	10.7	12.7
Male	4.1	3.1
Female	1.6	2.2

Of juvenile delinquents, 3.5 per cent are illiterate, as against 2.6 per cent of the general population of like age. The respective percentages for whites are 2.4 and 1.3; and for colored 10.7 and 12.7. The respective percentages for males are 4.1 and 3.1; and for females 1.6 and 2.2. With the colored, illiteracy exists to an actually less extent among juvenile delinquents than in the general population. It would appear that the lowest order of Negroes, or those without education, are not the ones most given to crime. The matter is affected to some extent by the factor of age, especially as concerns the relatively high proportion of negro offenders in early life. Among female juvenile delinquents illiteracy prevails less extensively than among females in general.¹

Of those committed to industrial schools of all kinds in 1926-1927 there were 9.4 per cent who could not read or write.²

¹ There has been a considerable decrease in illiteracy since 1910 among juvenile offenders, more so in fact than among the general population of like age. Among the colored the decreases for the two groups are fairly parallel. According to the census report for 1910, the percentage illiterate among the native white population was 3.0, but among prisoners of this group 4.5. Among the foreign-born whites the respective percentages were 12.7 and 20.7. Among Negroes the respective percentages were 30.4 and 25.2.

² United States Bureau of Education, Bulletin, 1928, No. 10 (Industrial Schools for Delinquents).

In the following table is given the percentage distribution of juvenile delinquents committed to special institutions according to the extent of education among them, or the last stage of schooling attained by them (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS ACCORDING TO SCHOOLING

School Last Attended and Grade Attained	Per Cent Distribution
Total.....	100.0
Never attended school.....	1.2
Elementary school	90.8
Under fourth grade.....	15.5
Fourth grade	13.7
Fifth or sixth grade.....	33.9
Seventh or eighth grade.....	27.7
High school	7.0
First year	4.5
Second year	2.0
Third or fourth year.....	0.5
Trade school	0.5
Other school	0.6

Juvenile delinquents have in general not gone far in their education. Nine-tenths (90.8 per cent) have had some degree of elementary school work. Three-fourths (75.3 per cent) have attained the fourth grade, a little over three-fifths (61.6 per cent) the fifth or sixth grade, and a little over one-fourth (27.7 per cent) the seventh or eighth grade. Only 7.0 per cent have had any education in high school, and only 0.5 per cent have completed a high school education. Only 0.5 per cent had attended a trade school. For 1.2 per cent there had been no schooling at all. The situation as to schooling among juvenile delinquents is considerably affected by the general factor of age.

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO GENERAL INSTITUTIONS ACCORDING TO SCHOOLING

School Last Attended and Grade Attained	Per Cent Distribution
Total.....	100.0
Elementary	85.0
Under third grade.....	5.1
Third or fourth grade.....	15.7
Fifth or sixth grade.....	24.8
Seventh or eighth grade.....	37.3
High school	14.6
Trade school	0.3

In the foregoing table are given similar, but less detailed figures as to juvenile commitments to general prisons and reformatories (1923).

A larger proportion of juvenile offenders in prisons and reformatories have attended the higher elementary grades and high school than in special institutions—probably because the former constitute an older group. A little over one-third (37.3 per cent) have completed the seventh or eighth grade, and one-seventh (14.6 per cent) high school.

In the following table is given the percentage of juvenile delinquents at different ages, and of white and colored separately, who were not in attendance at school prior to their commitment to special institutions (1923), with corresponding percentage for the general population not in school (1920).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS
NOT HAVING PREVIOUSLY ATTENDED SCHOOL

Age	Per Cent of Children Not Attending School					
	Total		White		Colored	
	General Popula- tion	Juvenile Delin- quents	General Popula- tion	Juvenile Delin- quents	General Popula- tion	Juvenile Delin- quents
Total	34.5	38.1	33.1	37.5	45.0	42.0
Under 12 years...	—	8.6	—	6.3	—	23.1
12 years	6.8	11.8	5.0	10.2	19.5	22.2
13 years	7.5	14.8	5.7	14.0	20.6	19.5
14 years	13.7	22.5	11.8	20.6	26.6	35.6
15 years	27.1	38.9	25.8	38.1	36.5	44.3
16 years	49.2	58.4	48.8	58.4	52.5	58.5
17 years	65.4	74.6	64.9	75.2	69.0	70.8
18 to 20 years....	85.2	79.7	84.8	80.5	88.8	70.7

Juvenile delinquents have in general been in attendance at school to a much smaller extent than children in the population at large. In other words, they drop out of school at a considerably earlier age. At all age periods, except the last, the proportion of children not having attended school is higher for the former than for the latter. The differences are greatest at the earlier ages, when the proportion for the one is almost double that for the other—with whites the proportion being more than double, and at the age of thirteen almost triple. Of juvenile delinquents of all ages (under twenty) almost two-fifths (38.1 per cent) were not in attendance at school prior to the time of their commit-

ment. With the rise in age, as with the general population, the proportion notably increases. For those under twelve it is less than one-tenth (8.6 per cent), for those twelve practically one-eighth (11.8 per cent), for those thirteen one-seventh (14.8 per cent), for those fourteen a little over one-fifth (22.5 per cent), for those fifteen practically two-fifths (38.9 per cent), for those sixteen almost three-fifths (58.4 per cent), for those seventeen three-fourths (74.6 per cent), and for those eighteen and over four-fifths (79.7 per cent). The proportion for the colored not in school (42.0 per cent) is higher than for whites at all ages, except seventeen and eighteen and over. The differences between delinquents and the general population are much less marked with the colored than with the whites.

It is to be added that of juvenile delinquents who had not been in attendance at school immediately prior to their commitment, 70 per cent had been out of school at least six months, most from one to four years. School retardation among juvenile delinquents has also been very high. A large proportion have been in grades below those to which their age would have generally entitled them.

In certain States from one-half to three-fifths of juvenile delinquents leave school before sixteen. The average age for leaving is fourteen. In many communities retardation in school is found in accompaniment with delinquency.

CHARACTER OF OFFENSES IN RELATION TO DEGREE OF EDUCATION

In the table on page 269 is given for the principal offenses the percentage of male and female commitments to prisons and reformatories having different stages of education (last school attended) (1923).

With males, the proportion is relatively high (above the average) ¹ among the illiterate for assault, homicide, violation of liquor laws, rape, general sex offenses, and violation of drug laws; among those who have attended first or second grade for assault, violation of liquor laws, homicide, rape, violation of drug laws, and general sex offenses; among those who have attended the third or fourth grade for assault, homicide, violation of liquor laws, rape, violation of drug laws, and burglary;

¹ It is to be kept in mind that reference is only to percentages of offenses as compared with other percentages as to extent of education; there is not indicated the ratio with respect to general population with different stages of education for the several offenses.

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE
ACCORDING TO EXTENT OF EDUCATION

Sex and Offense	Per Cent of Total								
	Illiterate	Elementary School				High School	Trade School	College	School Not Verified
		First or Second Grade	Third or Fourth Grade	Fifth or Sixth Grade	Seventh or Eighth Grade				
Total	10.7	6.0	14.9	18.5	28.1	14.4	1.0	3.4	3.0
Male	10.8	6.2	15.0	18.4	27.9	14.3	1.1	3.4	3.0
Homicide	19.7	9.5	18.5	16.7	19.9	6.7	0.6	1.8	6.5
Grave	19.2	9.9	16.7	17.6	21.0	8.4	0.7	2.0	4.5
Lesser	20.0	9.3	19.4	16.3	19.5	6.0	0.5	1.7	7.4
Assault	24.0	10.6	19.4	18.0	18.1	5.2	0.2	1.3	3.2
Robbery	6.0	3.3	12.6	20.2	36.8	15.7	0.7	1.7	3.0
Burglary	10.8	5.9	15.6	20.0	29.9	13.5	0.7	1.4	2.2
Larceny	8.1	5.3	13.8	19.6	30.9	16.1	1.0	2.5	2.6
Embezzlement	0.8	1.7	5.4	7.5	22.9	31.3	5.4	22.5	2.5
Forgery	2.9	2.6	10.0	12.4	31.3	24.4	2.1	8.5	5.8
Fraud	2.6	5.2	9.8	12.1	27.7	20.8	1.0	16.6	4.2
Possession of stolen property	5.9	5.3	11.8	20.1	32.2	18.6	1.9	3.7	0.6
Rape	14.3	6.9	18.1	19.5	27.0	10.2	0.9	1.1	2.0
All other sex offenses.....	12.3	6.4	14.2	19.9	25.5	11.7	2.5	5.1	2.3
Violation of drug laws.....	11.5	6.8	17.3	17.7	25.2	15.0	1.7	4.6	0.2
Violation of liquor laws....	17.3	11.5	18.4	20.5	17.8	9.5	0.4	1.6	2.9
Miscellaneous	8.7	4.6	15.4	17.9	29.7	15.0	1.2	4.9	2.7
Female	8.5	3.8	12.9	20.4	31.9	16.1	0.6	2.8	2.9
Larceny and related offenses	4.0	3.5	12.4	16.3	31.2	22.3	1.0	5.4	4.0
Prostitution	4.3	2.2	9.1	20.4	40.3	18.8	1.1	1.6	2.2
Violation of drug and liquor laws	16.0	5.1	16.0	14.9	30.3	10.9	—	3.4	3.4
All other and unknown....	7.7	3.1	13.0	24.8	31.7	15.1	0.4	1.9	2.3

among those who have attended the fifth or sixth grade for violation of liquor laws, robbery, possession of stolen property, burglary, general sex offenses, rape, and larceny; among those who have attended the seventh or eighth grade for robbery, possession of stolen property, forgery, larceny, and burglary; among those who have attended high school for embezzlement, forgery, fraud, possession of stolen property, larceny, robbery, and violation of drug laws; among those who have attended trade school for embezzlement, general sex offenses, forgery, possession of stolen property, and violation of drug laws; and among those who have attended college for embezzlement, fraud, forgery,

general sex offenses, violation of drug laws, and possession of stolen property. Homicide appears to become of the more serious character with the advance of education.

Very limited education seems rather a characteristic of persons charged with offenses against the person, and with violation of liquor and of drug laws. With the attainment of some degree of education, offenses against property for gain become more pronounced. With the arrival at the upper grades of the elementary school, such offenses are likely to be marked with violence. With a still higher degree of education, there is a tendency towards offenses on the order of deception or swindling, such as embezzlement, forgery, etc.; in fact, for these offenses some degree of education is necessary as part of one's equipment.¹

Among females, violation of drug laws is relatively the more prevalent with persons of little or no education. With those who have reached advanced elementary grades prostitution has a relatively high proportion; with those who have been to high school or trade school, larceny and prostitution; and with those who have attended college, larceny and violation of drug laws.

¹ In other investigations there has been observed the connection between offenses against property and the possession of some degree of education.

CHAPTER XXXIII

MENTAL AND PHYSICAL CONDITION

CONNECTION BETWEEN MENTAL DEFECTIVENESS OR ABNORMALITY AND CRIME

In the study of crime there is nothing so vexatious or so baffling as the question of the mental responsibility of the offender. Indeed, this issue may be said to a very large extent to underlie the whole matter. It has reference not merely to those offenders who are definitely and generally recognized as sufferers from mental disorder, but to practically all who for some reason give way to what is regarded as a criminal act. The problem, in many respects the major one in criminology today, is undergoing more and more inquiry and examination; and as the years pass, there will be fuller light thrown upon it, and we shall have clearer and more abundant knowledge.

The effect of mental irresponsibility upon the matter of crime, unsettling and subverting of hitherto accepted legal standards and principles as it is, is of a most serious order. Whether directly feeble-minded or suffering some general or particular mental abnormality—whether with defects of intelligence or of emotions, or of arrested or perverted development—persons so constituted must be considered as largely incapable of distinguishing between right and wrong, as the law presupposes for the commission of a criminal offense, or as lacking in the power of self-control necessary to restrain their wrongful acts. It is possible for such persons to commit crimes of varying degree, from the lighter offenses to the most grave. Their most dangerous ones are often directed against the person, possibly of a sudden and unexpected character, possibly the result of an uncontrollable "impulse." Those who are feeble-minded or of rather subnormal mental nature are especially given to such misdeeds as malicious damage to property, petty larceny, sexual offenses, desertion of wife or child, vagrancy, etc. Acts are for the most part not such as to require careful planning or execution, or the ability to cover tracks after accomplishment. Readily enough, also, one may become the tool for others in the commission of crime.

A distinct group is made up of those in an actual condition of feeble-mindedness or imbecility or in a kindred condition, usually existing from birth. In addition, there is a group having various degrees of subnormality or intellectual backwardness, with faculties of mind dulled or darkened. Another group, of relatively small range, which may be included consists of epileptics, their danger lying in the possibility of mental lapses during attacks of epilepsy.

Apart from the foregoing groups, there are groups having multiform mental derangements and disturbances, some temporary and some permanent, which may have a bearing upon crime. These may range from complete or definitely determined "madness" or insanity, or a state when one is "out of his mind," to certain "psychopathic" states, or various abnormal or anomalous or odd doings or various mental twists or eccentricities. There may be embraced different or distinct manias, or psychoses, or neuro-psychoses, or complexes, or neurasthenia, or hysteria—or states involving frenzies or illusions or delusions or hallucinations or distorted conceptions or perverted fancies or fevered imaginings or obsessions or perturbations, or states giving rise to what are regarded as forms or manifestations of irrational or unbalanced behavior or behavior not in step or not in tune with that of ordinary mortals.

Among these may be simple dementia, or the general weakening of one's mental faculties. Here may be included dementia praecox, occurring in the earlier years of life, and senile dementia, one of the possibilities of the later years. To this category may possibly be assigned paresis, with its breakdown of brain tissue as a result of disease. An especially dangerous form of mental disorder is paranoia, which, with its delusions of grandeur or of persecution, may create undue sensitiveness or quick resentment at an imagined affront. Mental trouble asserting itself in depression or in brooding may cause one to be morbidly suspicious, a state which may lead to anti-social behavior. Disorder of the mind may result in dissociation of ideas, loss of will power, giving way to impulsiveness, obsessions of different sorts, callousness, moral obtuseness, frenzied temper, etc. From these and like disorders may be occasioned pronounced irritability, anger, cruelty, and other dangerous states. Some manias, perhaps originating in excessive psycho-motor activity, may induce quarreling, assault, and other physical outbreaks.

Persons whose mental aberrations are much less pronounced or are of less severe character, often only "semi-responsible" for

their acts, are sometimes known as "psychopathic." With them there may exist lack of balance, emotional instability, difficulty of adjustment, irrational behavior, lack of emotional control, abnormal emotional responses, spasmodic impulses, volitional conflicts, weakened will power, dissociation of ideas, inability to learn from experience, undue excitability or irritability, fits of ill temper, inordinate egotism, persistent anti-social behavior, and other personal abnormalities and peculiarities known to the language of modern psychology. Sometimes criminal tendencies have their sources in general neurotic condition, or in a high stage of "nervousness," or in some abnormality of the nervous system. Sometimes instincts, natural and of value in themselves, become overcharged or overexcited, or perhaps warped, and assert themselves in criminal conduct; notable are the instincts of pugnacity, mating, rivalry, acquisitiveness, curiosity, adventure, fear, and others. Unwholesome tendencies may, especially with children, be due to exuberance of animal spirits, restlessness, desire for excitement, desire for self-expression, stress of puberty, sometimes to little more than sheer thoughtlessness—all with some possibility of the breakdown of restraints. Not infrequently a given mental state is simply the result of one's happening to be in a highstrung or overwrought or feverish condition, possibly without any direct symptoms of mental derangement. A low physical or nervous condition may induce or aggravate leanings or susceptibilities to wrongful acts. In some cases there may be underdevelopment, and occasionally perhaps overdevelopment, of some mental power or faculty, with reduced self-control in consequence.

There are, furthermore, what are denominated defects or imperfections of personality, which, while hardly raising the question of criminal responsibility, may still have an unfavorable effect upon one's conduct. Qualified or weak will power may prevent the inhibition of wrong impulses. An attitude or turn of mind, such as melodramatic poses, braggadocio, adventurousness, wanderlust, and the like, may have greater or less bearing upon one's action and upon shaping comportment. Hypersensitiveness may cause umbrage at a real or fancied injury or slight. Egotism, selfishness, self-esteem, vanity, vainglory, arrogance may have different untoward results—insubordinate or overbearing behavior, making one to be a disturbing element; creation of a philosophy of life, in which one is painted as rather a victim of circumstances and in reality no worse than those who are successful in their misdoings; and with hardened criminals the building

up of an indifference or callousness or pitilessness as to the injury or suffering which they are inflicting upon their victims. Indolence or laziness, with its lowering of stamina and sapping of vigor, may be the foundation for unhappy social attitudes, including a belief that something can be gotten without working for it, or an overconfidence in one's cleverness and ability to beat the law. How far suggestibility has a part in the matter of criminal tendencies, remains a question. By some criminals confession is made of the power of suggestion in their practices. Perhaps the theatre, moving picture show, exciting tales, newspaper write-ups of crime, and the like are not without some effect—but probably in the largest part over natures that are already weak.¹

EXTENT OF MENTAL DEFECTIVENESS OR ABNORMALITY AMONG OFFENDERS

The exact extent of mental irresponsibility among offenders against the criminal law, or even the exact proportion of the known criminal population which is of this character, cannot be ascertained or measured at the present moment. Estimates are highly varying of the population of penal institutions in the United States which is mentally irresponsible in greater or less degree—doubtless to an extent because based upon different measurements or different tests or different standards or different conditions. From different computations perhaps a composite or general picture of the situation may be presented. From one-tenth to one-half, more often from one-fifth to two-fifths, of prison inmates are asserted to be distinctly mentally defective or incapacitated or subnormal, or suffering from mental or nervous

¹ A classification of prisoners proposed by the medical section of the American Prison Association is as follows: I. Normal (as compared with abnormal). II. Feeble-minded. III. Neuropathic (abnormal constitution of character): (a) psychopathic personality (anomalies of character as to intensity and character of emotional and volitional reactions, and consequent inability to adjust one's self to environment; lack of continuity or fixity of purpose, and poverty of sentiment); (b) epileptic; (c) post-encephalitic personality (volitional disturbances and inability to inhibit impulsive and emotional activity; wide emotional ranges); (d) alcoholic; (e) drug addict; (f) psychoneurotic—(1) hysterical, (2) psychasthenic (anxiety and obsessions), (3) neurasthenic (irritability and fatiguability); (g) other brain or nervous abnormalities without psychosis specified. IV. Psychotic. V. Potentially psychotic: (a) recovered from psychosis; (b) psychosis in remission; (c) physical symptom of incipient psychosis. Proceedings, 1926, p. 229.

abnormalities, or actually feeble-minded. An additional proportion, possibly not greatly less, is regarded as more or less mentally retarded, or composed of border-line cases. Equivalent proportions are declared to be in need of custodial protection, or in need of guardians, or to be unable to manage their affairs with ordinary prudence. Of delinquent women seldom less than one-half are said to have mental disorder or to be mentally subnormal, and sometimes as many as three-fourths or four-fifths. One-third of prostitutes are asserted to be definitely feeble-minded, with perhaps almost twice as many of mental inferiority. Much the larger portion of female offenders in general are declared to be of low mental order. Sometimes close to one-tenth of the prison population is considered as of palpable mental disorder, from one-fifth to two-fifths of constitutional psychopathic inferiority, and almost two-fifths as of weak will or with the intelligence of a child. If the proportion of the feeble-minded in the general population is 0.5 per cent—a frequent estimate—then feeble-mindedness is a number of times as frequent in the prison population as with the population at large. From 1 per cent to 10 per cent of those confined in different penal and correctional institutions are said to have epileptic tendencies, and a like proportion to be in an actual state of lunacy. All in all, not less than one-half, sometimes three-fourths or more, of the prison population are stated to deviate from average or normal mental health.

The situation as to the proportion of the criminal population that is of greater or less mental defectiveness or abnormality is affected by two important considerations. One lies in the very type of offender who is caught by the hand of the law, and placed behind bars. The brighter and the smarter among the criminal classes are generally the ones who escape apprehension altogether and do not enter the ranks of those called to account by criminal justice. Those returned to prison are, furthermore, in general of the less keen mentality. These factors serve to swell to a disproportionately large figure that part of the prison population of low intelligence or of impaired or aberrant mental constitution or faculties.

The other consideration is that we do not know what is the exact proportion among normal people or in the population at large who are of like mental defectiveness or abnormality. Until some adequate system of measurement is available for the prison and the non-prison population, or some satisfactory standard of comparison can be applied equally to both groups, we shall remain largely in ignorance as to the actual excess of mental un-

soundness among those who are committed to our penal institutions.¹

CONNECTION BETWEEN IMPAIRED PHYSICAL HEALTH AND CRIME

A certain predisposition to crime is to be laid at the door of ill health or poor physical conditioning. This is sometimes perhaps fairly closely related to unhappy mental or nervous states; mental and physical states may at times interact. Physical defectiveness or ailments are held to be of greater extent with the criminal population as a class than with the population as a whole. Criminals in considerable part are below par, not mentally only, but physically as well.²

Conditions like those of malnutrition or undernourishment, or perhaps lack of sleep, may have not a little to do with the matter. A notable proportion of criminals are underdeveloped (though among certain criminals there may be overdevelopment as well), a condition that may have a direct bearing upon crime. Physical ailments or physical weakness or defectiveness may occasion irritability or extreme discomfort, or dissatisfaction in general with life, perhaps including a sense of inferiority—from which there may possibly result a giving way to criminal acts.

A large portion of the prison population is suffering from various definite diseases and defects or injuries, or from acute or chronic physical disorders. Some are reported as in a state of actual debilitation, certain ones as almost complete physical wrecks. One-fifth or one-fourth are said to be suffering with tuberculosis, from one-sixth to two-thirds with venereal disease, two-thirds or more with teeth defects, from one-sixth to one-third with eye disorders, approximately one-eighth with crippled condition, etc. Other frequent maladies are heart trouble, abdominal complaints, Bright's disease, asthma, etc. (Many delinquent children are reported as suffering from malnutrition, anemia, swollen glands, diseased tonsils, adenoids, etc., besides defective sense organs, especially sight and hearing.) A considerable proportion of offenders are addicted to alcohol or drugs, or to habitual dissipa-

¹ Practically the only attempted mental measurement of a cross-section of the general population has been in connection with the men drafted for service in the World War.

² It is at times argued that criminality may be the result of physical defects in the glandular system, as well as the brain. The majority of criminals, or their parents, are said to have imperfect glands. Upon physical endocrines, or chemical secretions, operating through ductless glands, is in some quarters placed much of the responsibility for crime.

tion. In some prisons one-fourth of the inmates are asserted to be disqualified by reason of some form of illness. In some as many as three-fifths are declared to be in need of treatment for physical disabilities or weakness.¹ We do not know what proportions of the population at large are under similar alleged ailments or defectiveness.

CONNECTION BETWEEN HEREDITY AND CRIME

With the matter of crime heredity has without question a certain connection. It may be expected to operate through physical or mental conditions, or predispositions of different kinds, which have themselves a bearing upon criminal conduct. Heredity may manifest itself through weakened wills or lessened resisting power, or through traits of one form or another, or through particular tastes or particular vices. In addition, there is probably a more direct connection in the effects upon the offspring of alcohol, narcotic drugs, and venereal disease in the parent.²

¹ Only until comparatively recent years there was believed to exist a considerable connection between crime and certain conditions or appearances or measurements of the human anatomy. Anomalies of features departing from the usual or normal were denominated stigmata, and were declared to denote or to indicate criminal tendencies. This conception, so far as it was offered as a scientific discovery, originated with Lombroso and others of the so-called Italian school of criminologists in the nineteenth century. Little consideration is now given to the question of stigmata. The theory is believed to be largely or entirely disproven. All the "stigmata" of criminals have been found in normal persons, though they exist perhaps in slightly greater degree in the criminal population. They exist in even greater degree among the insane. (It has been asserted that stigmata occur in 5 per cent of the normal population, in 10 per cent of the criminal, and in 15 per cent of the insane.) Stigmata are now regarded as evidence of degeneracy or simply of abnormality. If they occur to a greater extent among criminals than among other people, they are thus to be accounted for. Certain factors, moreover, that lead to crime also lead to insanity. It has also been set forth that the main difference between the criminal and the normal individual is that in the case of the former there exist generally weaker physical constitution and a somewhat lower order of mentality.

² Assertions have been made that the major part of crime is in some degree of hereditary origin.

CHAPTER XXXIV

RECIDIVISM

LACK OF MEANS OF DETERMINING FULL AMOUNT OF RECIDIVISM

The amount of recidivism, or the extent to which the same offenders are returned to prison in the United States, it is not possible at present to determine. As yet facilities for the identification of criminals, especially through exchange of finger prints between different police bureaus or different penal institutions of the country, have been but little developed. With cities there has been a certain beginning; with States, hardly any. Even the facilities placed by the Federal Government at the disposal of the several agencies of the country having to do with criminals, and capable of becoming a great clearing house as well as a center of information upon the subject, have been availed of to no great extent. Even what State or local prison records we have upon the subject cannot be expected to be complete or full. Scientific measures for ascertaining the full extent of recidivism in the United States belong mainly to the future.

With respect to the great body of offenders who are not caught up with by the law and are not placed behind bars, nothing can now be said. The term "first offender," which is generally applied to one who has never been previously committed to a penal institution, does not necessarily mean one who has never committed a crime. It has no reference to those who have never been apprehended or have escaped conviction.

EXPERIENCE OF OFFENDERS IN PENAL INSTITUTIONS

In the following table is given the percentage distribution of offenders, and of each sex separately, committed to prisons and reformatories, according to the number of prior commitments thereto (1923).¹

¹The statistics in this chapter, unless otherwise indicated, are taken from reports of Census Bureau—Prisoners: 1923, 1927; The Prisoner's Antecedents: 1923, 1929.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO PRIOR COMMITMENTS

Number of Prior Commitments	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Previously committed	50.5	50.5	50.7
3 or more times.....	8.8	8.8	9.1
2 times	10.5	10.5	9.7
1 time	31.2	31.2	31.9
Not previously committed	49.5	49.5	49.3

A large part of the prison population is composed of recidivists, or repeaters. One-half (50.5 per cent) of offenders in prisons and reformatories have already had experience therein prior to their present commitment. The proportion for males and for females is almost exactly the same—50.5 per cent and 50.7 per cent. Practically one-fifth (19.3 per cent) of all have a record of two or more prior commitments, and almost one-tenth (8.8 per cent) of three or more. For two prior commitments males have a slightly larger proportion than have females, and for three or more females have a slightly larger proportion than have males. In 1926 the percentage of recidivists among admissions to prisons and reformatories was 44.4—45.1 for males and 31.8 for females.¹

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO JAILS AND WORKHOUSES
ACCORDING TO PRIOR COMMITMENTS

Number of Prior Commitments	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Previously committed	46.8	45.8	57.9
10 times or more.....	4.3	4.0	7.2
6 to 9 times.....	3.4	3.2	5.5
5 times	2.1	2.0	3.2
4 times	3.1	3.0	4.2
3 times	5.1	5.0	6.8
2 times	10.2	10.0	12.4
1 time	18.1	18.1	17.8
Number of times unknown.....	0.5	0.5	0.8
Not previously committed	53.2	54.2	42.1

¹ In New York State in 1927 of cases dealt with by courts of record 37.1 per cent had been previously committed. Report of New York State Crime Commission, 1928.

In the foregoing table is given the percentage distribution of commitments to jails and workhouses, and of males and females separately, according to the number of prior commitments (1923).

Jails and workhouses likewise contain a large proportion of offenders who have been there before. A little under one-half (46.8 per cent) have been committed more than once. (There is doubtless a larger number of prior commitments than the prison records disclose.) Almost one-fifth (18.1 per cent) have been committed one time previously—one-tenth (10.2 per cent) two times; there are over one-fourth (28.2 per cent) who have been committed two or more times, almost one-tenth (9.8 per cent) who have been committed five or more times, and 4.3 per cent who have been committed ten or more times.

Females are repeaters in jails and workhouses to a greater extent than males. Of the former sex a little over one-fourth (26.9 per cent) have been committed three or more times before, as against a little over one-sixth (17.2 per cent) for males; almost twice as many females have been committed ten or more times, as males—or 7.2 per cent as against 4.0 per cent.

As a matter of fact, the relatively short terms of sentences to jails and workhouses could well be expected to occasion a large proportion of repeaters.

EXPERIENCE IN PENAL INSTITUTIONS ACCORDING TO NATURE OF SENTENCE INVOLVED

In the table on page 281 is given the percentage distribution of commitments to jails and workhouses with respect to prior commitments, according to whether sentence has been to imprisonment only, whether sentence has been to imprisonment and fine, or whether there has been imprisonment for nonpayment of fine, together with the percentage for each form of imprisonment according to extent of prior commitments (1923).

The number of prior commitments tends to become relatively large in case sentence is to imprisonment alone; relatively small in case imprisonment and fine are together inflicted; and of rather a balanced position in between in case imprisonment is imposed for nonpayment of fine. This may mean to a certain extent that imprisonment by itself serves to invite succeeding punishment, or to create a band of repeaters, or that the imposition of a fine has more of a deterrent effect with regard to the committing of later offenses. The situation probably for the most part has relation to the general character of the offender, includ-

PERCENTAGE OF COMMITMENTS TO JAILS AND WORKHOUSES BY PRIOR COMMITMENTS ACCORDING TO FORM OF SENTENCE

Number of Prior Commitments	Per Cent Distribution				Per Cent of Total		
	Total	Sentenced to—		Non- payment of Fine	Sentenced to—		Non- payment of Fine
		Imprison- ment Only	Imprisonment and Fine		Imprison- ment Only	Imprisonment and Fine	
Total.....	100.0	100.0	100.0	100.0	30.2	15.7	52.9
Having prior commitments	29.9	31.9	24.6	30.7	32.2	12.9	54.4
Previously committed—							
10 times or more.....	2.7	4.1	0.8	2.6	44.8	4.3	50.7
5 to 9 times.....	3.5	4.7	1.6	3.5	39.9	7.3	52.7
3 or 4 times.....	5.2	6.0	4.2	5.2	34.5	12.7	52.5
2 times	6.5	7.1	5.6	6.5	32.9	13.7	52.8
1 time	11.6	9.8	12.0	12.6	25.5	16.4	57.6
Number of times unknown	0.3	0.3	0.3	0.3	30.9	16.3	51.1
No prior commitments reported	70.1	68.1	75.4	69.3	29.4	16.9	52.3

ing his ability to pay a fine, as well as to the nature of the offense.

In investigations in certain States it has been found that recidivism is the more likely to occur among offenders with relatively little education; among the younger; and among the single. In the two latter cases there are evident the influences of a state of homelessness.

PENAL EXPERIENCE ACCORDING TO TYPE OF INSTITUTION

In the table on page 282 is given the percentage distribution of commitments to prisons and reformatories, and of males and females separately, according to type of penal institution to which prior commitment had been made (1923).

A considerable portion of the criminal population found in penal institutions has been through their entire range, perhaps graduating from a lower one to a higher, or perhaps progressing from the lowest to the highest. Of prisoners in prisons and reformatories 19.2 per cent have had prior commitment to a jail or workhouse; 3.8 per cent, to a juvenile reformatory; 5.1 per

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO TYPE OF PRIOR INSTITUTIONAL COMMITMENT

Class of Institution	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Previously Committed—All penal institutions	59.5	50.5	50.7
Jail or workhouse	19.2	19.0	22.7
Prison	10.7	11.1	3.1
Penal farm or camp	0.7	0.7	0.7
Juvenile reformatory	3.8	3.5	9.9
Reformatory for adults or juveniles	5.1	5.1	4.1
Both prison and reformatory	1.4	1.5	0.1
All other	9.6	9.6	10.0
Not previously committed	49.5	49.5	49.3

cent, to a reformatory for adults or juveniles; and 11.4 per cent, to a prison of some kind, including a penal farm. (For 1.4 per cent there has been previous commitment to both a prison and a reformatory.) For 9.6 per cent there has been admission to other penal institutions, largely both prisons and jails.

A much larger proportion of females than of males have had prior commitment to juvenile reformatories, and a much larger proportion of males than of females to prisons. A larger proportion of females have been previously committed to jails and workhouses, and a larger proportion of males to reformatories for adults or juveniles. Reformatory treatment in general, and especially for younger delinquents, is the case with females to a greater extent than with males. Commitment of females to local penal institutions is relatively frequent.

In the table on page 283 is given the percentage distribution of admissions to prisons and reformatories, and of males and females separately, according to whether previous penal experience had been in local institutions (jails, workhouses, etc.) or in State institutions (prisons and reformatories) (1926).

It would appear that those offenders who are listed here as recidivists are in considerable part confirmed criminals, having been guilty of the more serious infractions of the law for which punishment is inflicted in the State prisons and reformatories. Three-tenths (29.9 per cent) have previously suffered confinement in State institutions, composing practically two-thirds of all recidivists. One-half of females recidivists, however, have been in local institutions, having been charged with less serious offenses.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO PRIOR STATUS

Status as to Prior Commitment	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
First offenders	55.6	54.9	68.2
Recidivists	44.4	45.1	31.8
Not previously committed to prisons or reformatories but committed to jails, workhouses, etc.	14.5	14.4	16.2
One time	10.1	10.0	11.8
Two times	2.9	2.9	2.7
Three or more times	1.5	1.5	1.6
Previously committed to prisons or reforma- tories	29.9	30.7	15.6
One time	19.3	19.7	11.9
Two times	6.6	6.9	1.9
Three or more times	4.1	4.2	1.8

CHARACTER OF OFFENSES IN RELATION TO EXPERIENCE IN PENAL
INSTITUTIONS

In the table on page 284 is given by sex for different offenses the percentage distribution of commitments to prisons and reformatories according to the number of prior commitments thereto (1923).

With males, the proportion of repeaters is greatest in the case of burglary, violation of drug laws, robbery, possession of stolen goods, larceny, and forgery. Among those with three or more previous commitments, the proportion is relatively high (above the average) for burglary, violation of drug laws, larceny, and robbery; among those with two previous commitments, for burglary, possession of stolen property, robbery, violation of drug laws, forgery, and larceny; and among those with one previous commitment, for violation of drug laws, burglary, robbery, forgery, possession of stolen property, and larceny. There are relatively few repeaters as to embezzlement, general sex offenses, homicide, rape, fraud, violation of liquor laws, and assault. The proportion for grave homicide is greater with repeaters than for lesser—perhaps partly because the former is the more likely an offense of the professional criminal in the course of his operations.

With females, the proportion of repeaters is greatest for prostitution and larceny. Among those with three or more previous

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY PRIOR
COMMITMENTS ACCORDING TO OFFENSE

Sex and Offense	Per Cent of Total				
	Total Previously Com- mitted	Prior Commitments			Not Pre- viously Com- mitted
		3 or More Times	2 Times	1 Time	
Total	50.5	8.8	10.5	31.2	49.5
Male	50.5	8.8	10.5	31.2	49.5
Homicide	31.5	4.0	5.4	22.1	68.5
Grave	35.7	4.7	7.8	23.3	64.3
Lesser	29.7	3.8	4.3	21.6	70.3
Assault	45.5	6.7	8.2	30.7	54.5
Robbery	56.1	9.1	12.2	34.9	43.9
Burglary	64.3	13.5	15.6	35.3	35.7
Larceny	52.6	9.8	10.9	32.0	47.4
Embezzlement	27.4	4.2	3.0	20.2	72.6
Forgery	51.4	7.0	11.1	33.3	48.6
Fraud	33.5	3.9	3.5	26.1	66.5
Possession of stolen property	55.3	8.8	13.3	33.2	44.7
Rape	31.6	3.5	6.0	22.1	68.4
Other sex offenses	31.3	4.4	6.7	20.3	68.7
Violation of drug laws	60.1	10.1	12.1	37.9	39.9
Violation of liquor laws	43.0	5.2	5.7	32.1	57.0
Miscellaneous	50.0	10.8	10.2	29.0	50.0
Female	50.7	9.1	9.7	31.9	49.3
Larceny and related offenses	50.9	6.0	14.7	30.2	49.1
Prostitution	59.4	13.2	11.3	34.9	40.6
All other and unknown	48.8	9.6	7.6	31.7	51.2

commitments it is relatively high for prostitution; among those with two, for larceny and prostitution; and among those with one, for prostitution and larceny.

Prison repeating is especially pronounced as to offenses against property for gain, perhaps accompanied with violence. (This situation is generally found in other investigations.) A particular criminal class who are repeaters at all are more likely to be repeaters a number of times, or confirmed repeaters. In other words, they become rather professional criminals. Imprisonment is a due part of their criminal career.

In jails and workhouses repeaters are largely made up of persons charged with drunkenness, disorderly conduct, vagrancy, and like offenses—to a considerable extent persons unable to pay the fines imposed upon them.

CHARACTER OF OFFENSES IN RELATION TO TYPE OF PENAL INSTITUTION

In the following table is given the percentage of commitments to prisons and reformatories by sex for the different offenses according to type of institution to which previous commitment had been made (1923).

PERCENTAGE OF RECIDIVISTS COMMITTED TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO PRIOR INSTITUTIONAL COMMITMENT

Sex and Offense	Per Cent of Total							
	Any Penal Institution	Jail or Work-house	Prison, Penal Farm, or Camp	Reformatory Only		Both Reformatory and Prison	All Other	Not Previously Committed
				For Juveniles	For Adults or Juveniles			
Total	5.05	19.2	11.5	3.8	5.1	1.4	9.6	49.5
Male	50.5	19.0	11.9	3.5	5.1	1.5	9.6	49.5
Homicide	31.5	16.3	7.1	0.4	1.9	0.4	5.4	68.5
Grave	35.7	12.4	11.8	0.3	1.6	0.9	8.7	64.3
Lesser	29.7	18.1	5.0	0.4	2.1	0.1	3.9	70.3
Assault	45.5	21.1	11.3	1.8	3.3	1.2	6.8	54.5
Robbery	56.1	18.2	10.9	4.7	8.8	1.7	11.9	43.9
Burglary	64.3	18.1	14.8	6.8	7.2	3.0	14.5	35.7
Larceny	52.6	18.7	11.0	4.9	5.6	1.6	10.9	47.4
Embezzlement	27.4	16.1	6.5	1.2	1.8	—	1.8	72.6
Forgery	51.4	16.8	15.5	3.2	5.7	2.0	8.1	48.6
Fraud	33.5	11.3	15.2	0.4	2.6	0.4	3.5	66.5
Possession of stolen property	55.3	15.0	11.5	4.4	9.3	0.4	14.6	44.7
Rape	31.6	16.7	5.7	2.0	2.8	0.2	4.2	68.4
Other sex offenses..	31.3	13.6	7.7	1.3	2.1	0.8	5.9	68.7
Violation of drug laws	60.1	26.5	23.7	0.6	1.2	0.6	7.6	39.9
Violation of liquor laws	43.0	30.3	6.3	0.3	1.3	0.1	4.8	57.0
Miscellaneous	50.0	19.8	10.9	2.3	5.8	1.4	9.7	50.0
Female	50.7	22.7	3.8	9.9	4.1	0.1	10.0	49.3
Larceny and related offenses	50.9	21.6	7.8	6.9	0.9	—	13.8	49.1
Prostitution	59.4	20.8	—	22.6	3.8	—	12.3	40.6
All other and unknown	48.8	19.8	2.3	10.9	5.9	0.3	9.6	51.2

With males, the proportion having previous experience in jail or workhouse is relatively high for violation of liquor laws,

violation of drug laws, and assault; in prison (or penal farm), for violation of drug laws, forgery, fraud, and burglary; in juvenile reformatories, for burglary, larceny, robbery, and possession of stolen property; in reformatories for adults or juveniles, for possession of stolen property, robbery, burglary, forgery, and larceny; in both reformatories and prisons, for burglary, forgery, robbery, and larceny; and in other penal institutions, for possession of stolen property, burglary, robbery, and larceny. With females, the proportion having previously been in prison is relatively large for larceny; in juvenile reformatories, for prostitution; and in penal institutions not expressly mentioned, for larceny and prostitution.

In the following table is given the percentage of male recidivists admitted to prisons and reformatories for the different offenses according to the extent of their recidivism (1926).

PERCENTAGE OF RECIDIVISTS ADMITTED TO PRISONS AND REFORMATORIES BY OFFENSE ACCORDING TO PRIOR STATUS

Offense	Per Cent of Total							
	First Offenders	Total	Recidivists					
			Not Previously Committed to Prisons or Reformatories But Committed to Other Penal Institutions (Jails, etc.)			Previously Committed to Prisons and Reformatories		
			1 Time	2 Times	3 or More Times	1 Time	2 Times	3 or More Times
Total	54.9	45.1	10.0	2.9	1.5	19.7	6.9	4.2
Homicide	70.8	29.2	7.6	2.1	0.9	13.5	3.6	1.5
Rape	76.0	24.0	7.4	2.0	0.6	10.7	2.3	1.0
Robbery	52.1	47.9	11.0	3.9	2.7	20.8	6.2	3.3
Assault	54.9	45.1	8.1	1.7	1.5	19.9	6.9	7.0
Burglary	44.6	55.4	11.7	3.4	2.0	23.1	9.4	5.8
Forgery	50.6	49.5	9.8	1.8	1.2	23.2	8.6	4.8
Embezzlement	80.3	19.7	3.5	0.5	0.8	10.4	3.5	1.1
Fraud	66.5	33.5	5.0	1.7	0.9	16.2	6.5	3.2
Possession of stolen property	58.1	41.9	7.8	1.8	0.6	21.4	6.5	3.8
Larceny	52.5	47.5	11.3	3.3	0.5	20.8	6.9	3.3
Sex offenses, except rape...	70.3	29.7	6.4	1.9	1.9	14.8	4.7	1.4
Violation of liquor laws...	67.8	32.2	10.9	3.0	0.5	13.9	2.9	1.0
Violation of drug laws.....	47.2	52.8	8.7	3.0	1.6	24.2	9.2	6.1
Carrying weapons	37.6	62.4	10.3	2.9	1.9	25.4	13.8	8.0
Nonsupport or neglect of family	64.1	35.9	8.0	3.6	1.4	14.9	3.6	4.3
Other	52.6	47.4	9.9	3.0	1.5	17.5	7.8	7.8
Not reported	66.9	33.1	11.2	2.8	0.6	13.5	1.7	3.4

The proportion of recidivists is relatively high in the case of carrying weapons, burglary, violation of drug laws, forgery, robbery, and larceny. All but one of these offenses are offenses against property for gain, most possibly involving the use of

weapons. The proportion is relatively low in the case of crimes against the person in particular, such as homicide and sex crimes, though it is embezzlement which has the lowest proportion of all. Among offenses with respect to which there have been two or more prior commitments, in addition to the foregoing, a notable one is violation of liquor laws—and as to local institutions non-support of family, and as to prisons and reformatories assault.

AGE OF RECIDIVISTS

In the following table is given the median age for male and female first offenders and recidivists admitted to prisons and reformatories according to nature of offense (1926).

MEDIAN AGE OF RECIDIVISTS ADMITTED TO PRISONS AND REFORMATORIES

Offense	Median Age (Years)			
	Male		Female	
	First Offenders	Recidivists	First Offenders	Recidivists
Total	26.3	27.1	22.7	24.4
Homicide	31.6	30.7	28.1	—
Rape	27.1	27.0	—	—
Robbery	22.8	24.7	27.5	—
Assault	29.3	29.3	23.8	26.9
Burglary	22.7	25.3	24.6	—
Forgery	26.5	28.7	24.2	27.9
Embezzlement	34.0	31.3	—	—
Fraud	34.3	34.8	—	—
Possession of stolen property	23.8	24.9	23.8	—
Larceny	23.1	24.3	23.8	24.9
Sex offenses, except rape	33.0	33.5	22.3	23.1
Violation of liquor laws	36.6	36.4	37.9	37.5
Violation of drug laws	33.3	34.1	34.3	33.4
Carrying weapons	25.8	24.1	—	—
Nonsupport or neglect of family..	31.2	33.8	—	—
Other	27.2	27.9	19.9	21.2

The median age of recidivists is in general little above that of first offenders. With males the respective median ages are 27.1 and 26.3, and with females 24.4 and 22.7. The median age with males is higher for recidivists than for first offenders, except in the case of embezzlement, homicide, carrying weapons, and violation of liquor laws. It is also higher with females except in the case of violation of liquor and of drug laws.

EXPERIENCE OF JUVENILE DELINQUENTS WITH PENAL,
CORRECTIONAL, OR WELFARE AGENCIES

In the following table is given the percentage of juvenile delinquents committed to prisons and reformatories who have had previous commitment to a penal or correctional institution of some kind (1923).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO PRISONS AND
REFORMATORIES WITH PREVIOUS INSTITUTIONAL RECORDS

Character of Previous Institution	Per Cent of Total
Institution for juvenile delinquents	14.1
Jail, house of correction, or workhouse	7.3
Prison or reformatory (including penal farms, etc.)....	5.1
Other institution	1.8
2 or more institutions	5.2

Among children committed to general penal institutions a considerable proportion have already started upon a criminal career, and perhaps are on the way towards becoming hardened criminals. Of all juvenile offenders committed to prisons and reformatories, one-third (33.5 per cent) have had prior experience at a penal or correctional institution. There have been 14.1 per cent previously in special institutions for juvenile offenders, 7.3 per cent in jails and workhouses, 5.1 per cent in prisons or reformatories, and 1.8 per cent in other institutions—5.2 per cent having been in the care of at least two.

In the following table is presented the percentage of both white and colored juvenile delinquents committed to special institutions, according to previous institutional or probational care, together with the percentage previously on probation (1923).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS
ACCORDING TO PREVIOUS CARE

Nature of Previous Care	Per Cent of Total	
	White	Colored
Never before under care of agency or institution or on probation	34.8	35.3
Previously under care of one agency or institution or on probation	37.7	38.0
Previously under care of two or more agencies, institutions, or probation departments	20.6	14.4
Not reported	6.9	12.3
On previous probation	43.1	37.1

Most children in institutions for juvenile delinquents have already been in trouble, and have had prior attention from some correctional institution or agency. Of white delinquents, over one-third (37.7 per cent) have been previously under the care of some agency or institution or on probation, and one-fifth (20.6 per cent) under two or more—or almost three-fifths (58.3 per cent) in all. Over two-fifths (43.1 per cent) have been previously on probation. Proportions are similar for the colored.

In the following table is given the percentage of juvenile delinquents committed to special institutions who have previously been under the care of some institution or agency for any of the delinquent, dependent, or other special classes (1923).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS
ACCORDING TO PREVIOUS TREATMENT

Nature of Previous Treatment	Per Cent of Total
Child placing or child protective agency	3.9
Institution for dependent or neglected children	8.1
Institution for juvenile delinquents	20.0
Institution for feeble-minded, epileptic, or insane	0.2
Other institution	4.4

Considerably over one-third (36.6 per cent) of delinquent children in institutions have had some previous connection with a social welfare agency or institution; that is, have required some attention from society, due largely to some imperfect functioning of the natural home. One-fifth (20.0 per cent) have been before in institutions for delinquent children, and are thus to be classed as "repeaters." There are 8.1 per cent who have been in the care of some institution for dependent or neglected children; 3.9 per cent who have been in the care of some child-placing or protective agency; and 4.6 per cent who have been in the care of some other institution.

The proportion of juvenile delinquents who have had previous corrective treatment varies greatly in different areas of the United States. A low percentage for this class, or "repeaters," may indicate one of several factors: relatively successful work in a former institution; prolonged keeping at the first institution; or the sending of certain offenders to a regular penal institution.

A considerable proportion of children in different juvenile reformatories and like institutions have some record for previous delinquency. From one-fifth to one-half have at some previous time been brought to the attention of the law. Possibly

one-third have been in a juvenile court more than once. From one-fourth to one-half have previously been on probation. In some cases as many as three-fifths have been on previous probation or in an institution for juvenile delinquents. Of children charged with delinquency in some cities from one-third to two-thirds have already had institutional experience. Some children who are committed to an institution, even at a relatively early age, seem to have received little benefit therefrom.

Sometimes as many as one-fifth or one-fourth of child offenders have had experience with a juvenile court or an institution once before, one-tenth or one-eighth twice, and smaller proportions a greater number of times. Of children before juvenile courts in 65 cities in 1928, 11 per cent had been there once before, 4 per cent twice, and 5 per cent three or more times.¹ Repeating may begin early.

REASONS FOR RECIDIVISM

Strange as it may appear, and serious as is the indictment of society involved, the way of the offender, unless he be of the type of the occasional criminal, or one who is truly subject to reformatory influences, is easily back to prison. There are several circumstances to account for this state of affairs. Even while in prison the chain of future imprisonment may be in course of being forged about him. He stands in fear and distrust and alienation, perhaps in enmity, toward his prison keepers within just as he does toward the policeman without. With his fellow prisoners, however, some of whom he has perhaps known in his days of freedom, he sees those who are like himself, who have been engaged in practices like his own, who like himself have fallen afoul of the law while so engaged, who like himself have been seized and thrust behind bars. They can understand and sympathize with him; with them a strong fellow feeling arises. When he leaves prison, what is more natural than that he should seek their society and consort with them? Both in prison and out, he may learn from their hands valuable lessons in the art of criminal operations—perhaps how he could have made a much better success of his particular criminal job, perhaps how he could have better circumvented the law. With his comradeship with criminals he may come to adopt a sort of philosophy of life, in which a criminal career may be apologized for or glossed over, or perhaps gloried in.

¹ Children's Bureau Publications, No. 200 (Juvenile Court Statistics, 1928), 1930.

Out of prison there are met few helpful or beneficial contacts or influences. Jobs if gotten at all are of irregular sort, and often of brief duration. Real friends are few; home interests or ties are slight.

Out of prison, moreover, the ex-prisoner, if not the occasional or reformable kind, often knows little else than the manner of living of the criminal. Old habits, old indulgences, old haunts, old cronies, all appear before him to turn him back and to drag him down. The original causes of his downfall are still in his system—lack of education, industrial incompetency, sloth, mental or physical limitations, lack of initiative or resourcefulness, inability to make adjustment to conditions outside prison, shrunken self-respect, meager qualifications as a social unit, and whatever else has contributed to his degradation, or helped to make a criminal out of him.

As a further impetus towards his discomfiture and defeat, he finds in a very true sense that every man's hand is raised against him, that every face is fastened upon him in misgiving or suspicion, or is averted from him in avoidance or repugnance. When seeking employment, the one sure means of keeping his footsteps in the right path and of holding him back from his evil ways, he must above all else conceal his prison record, something always of doubtful possibility, and he must spend his days in torture for fear of its discovery. Under these circumstances, what is easier, when the opportunity offers, or when temptation again assails him, whether after falling in with his old associates or in trying his luck alone, than for him to return to his old calling and take up anew the way of the criminal? Indeed, what is more natural?

The last force to seal the doom of the offender who has passed from prison walls is his ancient enemy, the officer of the law. This Javert is ever with a watchful, distrustful eye upon him, ever at his heels, ever dogging his steps. The ex-prisoner must stand ready to be locked up anew as a suspicious character, or upon a charge of vagrancy, or as without visible means of support. When there is put forth a roundup or a dragnet for supposed criminals, especially at a time of serious outbreak of crime, or when a concerted attack is being launched against it, it is he who can hardly expect to escape its operations.

At the same time the excitement of the old career, the lure of adventure lying within it, the very thrill of the hazard undertaken in it, the self-assurance of future escape from danger and of the winning of large and justifying rewards, all perhaps com-

bine to speed the steps of the offender towards his former line of action.

If he is in the days of his youth, or if he is weak of mind or intellect, or if he has long pursued the occupation of the law-breaker, his retrogression is simplified and facilitated.

To some of those who offend against the law a stay in prison is to be looked upon as but a due part in their experiences, to be accepted as a way station in their particular calling. With certain classes of the criminal or semi-criminal population, especially those engaged in the lighter sort of transgressions, a penal institution may constitute, comparatively speaking, a not wholly unattractive or uninviting or undesirable sojourning or resting place. With other classes, especially those engaged in the more serious offenses, a penal institution may constitute but a halting place for the concoction of new crimes.

A certain proportion of those released from prison and who gravitate back to it should never have been permitted to part company with it, at least for the time being. For them continued custody constitutes the only desirable present treatment. Life outside the restraining walls of the prison is as unsafe for them as for society.

For the ex-prisoner and the manner of his faring society has cared little and has provided little. When a man is sent forth from behind bars, the state washes its hands of him. Unless released through the process of parole, he is entitled to no further attention or consideration on its part and usually receives none. The state as a rule feels its duty discharged when it has done three things for its former convict: when it has given him a new suit of clothes; when it has given him a handful of ready cash (often not more than a few dollars); and when it has given him a ticket or means of transportation to the place of his original residence, or to some other designated destination.

So far as providing some sort of loan fund for the ex-prisoner, or furnishing him with a little capital to start upon, the matter has hardly been attempted in America. Unless on parole, or unless the beneficiary of special friendly aid, he must make his way alone. But there remains with him his old self—perhaps of a sort to have caused his once being placed within prison walls, plus the experiences that he has had while there, whether for the better or for the worse.¹

¹The matter of the paroled prisoner is considered in Chapter XLVI, the matter of organizations interested in the welfare of the ex-prisoner in Chapter LV.

CHAPTER XXXV

PREVIOUS EXPERIENCES, ASSOCIATIONS, AND HABITS

EXPERIENCE OF OFFENDERS IN NON-PENAL INSTITUTIONS

In the following table is given the percentage distribution of persons committed to prisons and reformatories, and of males and females separately, according to previous admission to non-penal institutions (1923).¹

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
ACCORDING TO PREVIOUS ATTENDANCE AT NON-PENAL INSTITUTIONS

Class of Institution	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Previously admitted—All non-penal institutions	5.1	4.4	18.9
Hospital for mental disease	1.1	1.1	2.0
Institution for feeble-minded	0.2	0.1	2.0
Tuberculosis hospital	0.9	0.9	0.2
Almshouse or poor farm	0.2	0.2	0.4
Other non-penal institution.....	2.8	2.2	14.4
Not previously admitted to non-penal institutions	94.9	95.6	81.1

Of all prisoners 5.1 per cent had had residence in a non-penal institution of some kind before the commission of their offense. Here are embraced hospitals for mental diseases, tuberculosis hospitals, institutions for the feeble-minded, almshouses, and other institutions (for the most part general hospitals). Of females almost one-fifth (18.9 per cent) had been previously admitted to non-penal institutions—largely to other institutions, in the main general hospitals for those suffering from venereal disease. The proportion as to tuberculosis hospitals is greater for males.

Even though it is probable that full report is not made with respect to mental disorder or derangement (the condition often

¹The statistics in this chapter, unless otherwise indicated, are taken from report of Census Bureau—The Prisoner's Antecedents: 1923, 1929.

being unrecognized without special examination, and a prior state sometimes being unknown or concealed), it is evident that a far larger proportion of prisoners have been subject to mental affection than of the population in general. (In 1923 0.35 per cent of the general population was in institutions for the insane or discharged or paroled therefrom, and 0.04 per cent in institutions for the feeble-minded).¹

CHARACTER OF OFFENSES IN RELATION TO EXPERIENCE IN NON-PENAL INSTITUTIONS

In the following table is given for the different offenses among males the percentage distribution of commitments to prisons and reformatories, according to type of non-penal institution to which there had been previous admission (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE
ACCORDING TO PREVIOUS ATTENDANCE AT NON-PENAL INSTITUTIONS

Offense	Per Cent of Total						
	All Non-penal Institutions	Hospital for Mental Dis- eases	Institution for Feeble- minded	Tuberculosis Hospital	Almshouse or Poor- house	All Other Non-penal Institutions	Not Previously Admitted
Total	4.4	1.1	0.1	0.9	0.2	2.2	95.6
Homicide	4.4	2.2	—	0.5	0.1	1.6	95.6
Grave	5.9	3.3	—	0.7	0.4	1.5	94.1
Lesser	3.7	1.7	—	0.3	—	1.7	96.3
Assault	4.1	0.9	0.2	0.7	0.2	2.1	95.9
Robbery	5.3	1.2	0.1	0.5	0.2	3.3	94.7
Burglary	4.3	1.1	0.2	0.7	—	2.2	95.7
Larceny	3.4	1.0	0.1	0.4	—	1.8	96.6
Embezzlement	2.7	—	—	0.9	—	1.8	97.3
Forgery	3.8	1.0	—	1.0	0.3	1.5	96.2
Fraud	6.4	1.3	—	1.3	0.6	3.2	93.6
Possession of stolen prop- erty	6.0	0.7	—	2.2	—	3.0	94.0
Rape	3.4	0.6	0.4	0.2	0.6	1.6	96.6
Other sex offenses	5.9	0.3	0.3	1.0	1.0	3.3	94.1
Violation of drug laws...	16.2	4.7	—	6.3	—	5.1	83.8
Violation of liquor laws..	1.5	—	—	1.3	—	0.2	98.5
Miscellaneous	5.1	0.3	0.1	1.9	0.1	2.6	94.9

The proportion who have had previous residence in a non-penal institution is relatively high in the case of violation of drug

¹ See *ibid.*, p. 46.

laws, fraud, possession of stolen property, general sex offenses, and robbery. Among those who have been in a hospital for mental diseases the proportion is relatively high for violation of drug laws, homicide (especially grave homicide), fraud, and robbery; in an institution for the feeble-minded, for rape, general sex offenses, assault, and burglary; in a tuberculosis hospital, for violation of drug laws, possession of stolen property, violation of liquor laws, fraud, forgery, and general sex offenses; in almshouses, for general sex offenses, rape, fraud, and forgery; and in other institutions, for violation of drug laws, robbery, general sex offenses, fraud, and possession of stolen property. The high proportion as to hospitals for the insane in the case of violations of drug laws is in large measure due to the circumstance that many drug addicts are subject to mental disorder. The high proportion for homicide is explained by the circumstance that mental disease is often involved in the commission of this offense. Offenses by those once in institutions for the feeble-minded are usually offenses against the person.

RELATION OF WAR SERVICE TO CRIME

In the following table is given for different offenses the percentage of male commitments to prisons and reformatories who

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES BY OFFENSE
ACCORDING TO WAR SERVICE

Offense	Per Cent of Total
Total	20.0
Homicide	16.5
Grave	15.9
Lesser	16.8
Assault	18.7
Robbery	25.4
Burglary	17.8
Larceny	20.0
Embezzlement	26.5
Forgery	30.6
Fraud	22.1
Possession of stolen property	24.4
Rape	17.6
Other sex offenses	17.6
Violation of drug laws	19.0
Violation of liquor laws	11.3
Carrying concealed weapons	17.6
Nonsupport or neglect of family	26.3
Violation of U. S. postal laws, etc.	19.8
All other specified offenses	19.3

were reported as having served in the United States army or navy in the World War (1923).

Of all male offenders one-fifth (20.0 per cent) are so reported. The proportion is relatively high in the case of forgery, embezzlement, nonsupport or neglect of family, robbery, possession of stolen property, and fraud. These are offenses against property for gain—ones sometimes accompanied with violence, sometimes not—and, in addition, family desertion.

As only a limited proportion of those thus reported actually saw service at the front, little light is thrown upon the influence of actual war service upon criminality. There is reflected, however, in considerable degree the direct and indirect effects of the change and disorganization in the lives of those called into service, together with the development of a certain restlessness and of new social attitudes on their part. The matter is also affected by the factor of age—most of those in war service being at a time of life when crime is most frequently committed.

EFFECTS OF EVIL COMPANIONS

Human beings are known, and are developed and molded, by the company they keep. Nowhere is this more true than with children and youth. The effects of evil associations upon those in the early years of life are verily beyond calculation. The mind at that time is not sufficiently formed, and not of sufficient firmness and strength, to permit proper or full distinction between the issues of life presented, or between the good and the bad. Through baneful contacts and fellowships are acquired wrong attitudes and wrong habits, too often of permanent effect. Those morally weakest and those least capable of resisting temptations are the first to fall into mischievous ways. A large proportion of those confined in correctional institutions can point to evil associates as the primary cause or the underlying cause of their undoing.

A special form of influence through associates which the growing child must often face, especially in cities, is the "gang." In some communities a large part of male delinquents have had greater or less connection with it, perhaps getting their initiation into wrongdoing from it. The gang spirit may be rooted deep in the boy; but turned into unhealthful channels, it may lead to great harm to the boy and to society. Some of the ill results of gang influence are the inculcating of demoralizing personal habits, schooling in the technique of crime, imparting of attitudes

of irresponsibility, developing of exaggerated spirit of independence, indifference to law or to the rights of others, and acquiring of the philosophy of taking a chance.

When in a group or gang one who is looked up to, consciously or unconsciously, as a leader and guide is himself of a vicious or depraved or abandoned character, sad are the consequences which his admirers, followers, and imitators must suffer. Possibly there arises a sort of glorying in evil practices, and the development of a spirit of braggadocio, something that may have pronounced effects upon youthful and plastic minds.

When, on the other hand, as sometimes happens, there are few or no associates, or rather when there exists no real companionship or comradeship—when one is friendless—there may arise a sense of loneliness, or of isolation, or even of estrangement from the world, a state of mind which may perhaps lead to morbid or anti-social attitudes, or to indifference or insensibility to consequences of particular acts, and perhaps eventually to definite crimes.

EFFECTS OF MISUSE OF LEISURE TIME OR OF EVIL RESORTS

The use made of leisure moments, or of time when one is not engaged at productive toil—and with children when not in attendance at school—often determines not only the sort of character to be formed in general, but the possible entry of one into a criminal career. The manner of spending idle hours has intimate connection with the matter of delinquency. To loafing the criminal may often owe part of his criminality.

One noxious method of passing the day, in its possible effects in crime, is idleness or deliberately having nothing to do, or protracted leisure of one's own choosing. Here there result a sapping of vigor, an undermining of stamina, the formation of irregular habits of existence, and above all the creation of a state of mind of indolence, with the turning of attention to easy ways of living, including inclinations to take a chance or to trust to luck. A well-known character always finds something for idle hands to do. It may be mischief; it may be something more.

But however spare time arises, whether as a substitute for useful occupation with one's hands, or simply as a necessary surcease or respite or abatement from toil or a means of relaxation and recuperation with respect thereto, there must be discovered some way of spending it. Man is so constituted that he craves

and demands diversion, recreation, enlivening, entertainment, exhilaration, amusement, fun, merriment, sport—and to a great extent therewith comradeship and the society of his fellows. These have a natural and legitimate place in human existence and in the social order. If the means provided for the purpose are not of proper and wholesome and beneficial character, means of opposite character will quickly force themselves into the gap. It is the possibility of means of this opposite kind that must be reckoned with as of the utmost consequence in getting at the basic causes of criminal careers.

We find that this matter has been so poorly attended to by society that the character of the resorts visited or frequented by a large part of the population for purposes of diversion or fun or play may be such as, both negatively and positively, to stimulate, encourage, and promote wrongdoing. Resorts that prey upon man's instinctive love for enjoyment and cheer are many and varied. They may be open to view, or they may be under cover and have to be sought out. In some evil practices may be dressed in attractive colors, with more or less direct invitation to participation in them. In some the devices may not in themselves be harmful or hurtful, but the associations involved may be demoralizing; the very atmosphere may be disintegrating and vitiating. In a certain portion the amusement afforded is of a cheap or of a brutalizing nature, or there is created an air of "toughness."¹ In a certain portion the attitude developed toward amusement is rather the "sporty" one. In all this there may be a lowering of moral stamina or an enfeeblement of moral resistance; and a heavy toll may be taken in what is known as character and in uprightness of living, powerful bulwarks that they are against movements towards crime.

When society fails to furnish the right kind of recreation or entertainment, or makes inadequate provision for it, or fails to supervise and control what is offered through private hands, especially that of a commercialized character, it is childhood and youth that are called upon to pay the heaviest penalty. Other considerations being equal, juvenile delinquency may be said to be in inverse ratio to the extent of adequate and attractive play facilities in a community. But the want of measures and resources for amusement and leisure-time activities shows its effects with all ages. Failure of the community in this respect is

¹ In particular are prize fights, cheap dance halls, cheap vaudeville entertainments, cheap night clubs, gambling establishments (especially pool rooms), places associated with vice, etc.

a very large, possibly in the last analysis the largest, source of criminality to-day.

With welfare or uplift agencies, such as social settlements, boy scout organizations, Young Men's Christian Association, and the like, one of the main functions of which is the affording of wholesome, profitable recreation and amusement, only a very small percentage of youthful delinquents have ever had any real or permanent contact. With definite moral and religious agencies and institutions, especially the church, those who enter the ways of crime are largely out of touch; their lives are lived without the infinitely beneficial powers and guidance and protection which spiritual faith has to offer. In certain prisons it has been found that only about one out of twenty prisoners were active church members at the time of the commission of their crimes. Of prisoners in one prison in Illinois 9.0 per cent had been regular church attendants at the time of their offending; 7.5 per cent had never been so; 68.9 per cent had once been so, but had ceased; and 14.6 per cent had had very irregular attendance.¹ In some cities two-thirds of juvenile delinquents are found to be without connection with any religious agencies. In some reformatories three-fifths of inmates are said never to have attended church or Sunday School.

It is to be remembered that a very large part of the population, including youth, are but little affected or influenced by religious ministrations and teachings, or have these among their main interests. It is estimated that of persons under twenty-five years of age something like two-thirds receive no religious teaching from any agency, or are not enrolled in any institution offering systematic moral and religious instruction.² A vast recruiting field is thus found at hand for the forces and agencies of darkness.

When to all these circumstances and factors there is to be added, as sometimes is to be done, especially for youth, the breaking or crippling of home and family ties—their denial or their absence in the strain and stress of youthful life—there is set before us a fairly ample explanation of the prevalence of delinquency and crime.

¹A. A. Bruce, A. J. Harno, and E. W. Burgess, *Workings of Indeterminate Sentence Law and Parole System in Illinois*, 1928, p. 233. Of former inmates of the Massachusetts State Reformatory, 88.5 per cent had attended church irregularly, and 3.0 per cent never. S. S. and E. T. Glueck, *Five Hundred Criminal Careers*, 1930.

²See *Interchurch World Movement of North America, Survey*, 1920, vol. i, p. 209.

excepting that of childhood and youth, is subject. These become the more serious if carried or developed to an excessive degree, or if attended with pronounced physical or mental disturbances. At this period also a wrong slant in general towards life may be acquired. All these things possibly receive little or no attention or treatment, or are mishandled. With time matters may grow worse, and perhaps in the child's being hurtful qualities become fixed.¹

Apart from innate forces or those lying within, the influences that turn a child to wrongdoing or set his steps toward crime remain of complex nature—all elementally having to do with disorganization of family life, bad or broken homes, weak or inadequate connection with the school or other educational agencies or their impaired functioning, unhappy neighborhood conditions, lack of proper and wholesome recreation facilities, low living or low moral levels, and constructive or uplifting contacts of restricted extent.²

¹Very valuable case studies are now appearing with regard to delinquency in childhood.

²Among those who have been inmates of the State reformatory at Elmira, New York, down to 1926 (the average age being twenty-one years), the following are the causes ascribed for their wrongdoing, as stated by themselves: bad association, 35 per cent; desire for "easy money," 13 per cent; desire to show a woman friend a good time, 13 per cent; unpleasant home conditions, 11 per cent; lax home discipline, 10 per cent; lack of employment, 7 per cent; influence of published accounts of crime, 7 per cent; poolroom associations, 5 per cent; association with gangs or loafers, 4 per cent; liquor, 4 per cent; gambling, 3 per cent; overindulgence of parents, 3 per cent; theft or misuse of automobile, 3 per cent; truancy, 2 per cent; insufficient harmless recreation, 1 per cent; pernicious literature or moving pictures, 1 per cent. Report, 1927. Among those admitted to the New Jersey State Home for Boys in 1924 and 1925 the following major causative factors (with some duplications) have been set down: lack of supervision in home, 41 per cent; defective intelligence, 27 per cent; other personality defects, 22 per cent; bad environment outside home, 13 per cent; special difficulties in adjustment, 12 per cent; physical abnormalities, 5 per cent (and in addition poor school grading). *Journal of American Institute of Criminal Law and Criminology*, Aug., 1927.

CHAPTER XXXVI

CIRCUMSTANCES OF COMMISSION OF CERTAIN OFFENSES

GENERAL CONSIDERATIONS

As has been indicated, crimes in general are committed in consequence of the particular constitution or nature of the offender himself, or from the particular situation or environment in which he has his being or to which he happens to be exposed. From a consideration of the circumstances attending or surrounding the commission of certain offenses, or of the factors having a part in their commission, special light should be thrown upon the causation of a considerable portion of crime. In addition, for dealing with some forms of it there may be found possible in greater or less degree appropriate measures.

The circumstances in connection with the commission of crime have so far in the United States had but slight scientific examination, though some valuable case studies of a local character have been made, especially with reference to juvenile delinquency. Only a few general situations may now be indicated, and of the more palpable kind.¹

¹ In Chicago in 1925 of murders committed, 11 per cent were assigned as in connection with robberies, 21 per cent in revenge or blackhand operations, 9 per cent in infanticide or abortion, 10 per cent in family quarrels, 16 per cent in quarrels of friends, 9 per cent in drunken quarrels, 7 per cent in so-called lovers' quarrels, 9 per cent in connection with suicides, and 10 per cent in miscellaneous matters. The causes assigned in 1927 were as follows: altercations and brawls, 31 per cent; gang fights, 15 per cent; automobile, 7 per cent; victim of hold-up, 9 per cent; abortion and infanticide, 8 per cent; domestic (husband and wife), 6 per cent; policeman killed on duty, 3 per cent; revenge, 6 per cent; jealousy, 6 per cent; unknown, 9 per cent. (From reports of Chicago Crime Commission.) Of murder and manslaughter cases in New York City in 1929, 7.0 per cent were ascribed to gangster revenge, 11.2 per cent to the commission of a felony, 39.2 per cent to family or love affairs, 3.7 per cent to business disputes, 2.5 per cent to gambling disputes, 8.4 per cent to gangster disputes, 3.6 per cent to drunken disputes, 2.2 per cent to miscellaneous causes, and 22.2 per cent to unknown causes. Report of Police Department of City of New York, 1929. Of homicides in four southern cities in 1921 and 1922,

For some portion of what is known as criminality there are certain lines of conduct which are primarily responsible. They show themselves as derelictions of which society must take cognizance when they attain the stage of vagrancy, disorderly conduct, and the like. In what arises from them may be involved no great damage either to the person or to property, but there is entailed great harm to the offender himself, and there is constituted a continuing problem for society. Through them is also paved the way for larger and more consequential misdeeds.

Probably most criminals do not deliberately enter upon crime as a definite career; the larger part may rather be said to fall into it. When it is taken up more or less as a vocation, the inducing consideration is generally easy money.

With respect to no small part of criminality, it is to be remembered that criminal activities are carried on only as one source of income—sometimes the main source, and sometimes as but an incidental or occasional source. They are engaged in alongside of or alternately with employment of quite legitimate, and even respectable, nature. In other words, crime constitutes with many criminals a part-time occupation.¹

PROFESSIONAL CRIMINAL

A special situation, and in a considerable sense the most alarming one with which society has to deal, is that created by the habitual or professional criminal. The career of such a one may start in comparatively early years, but before long has become of such fixed character that departure from it is often hardly to be expected. His offenses are for the most part to-day offenses against property for gain, frequently, though by no means always, attended with violence in the attainment of his ends. Sometimes assault or homicide takes place in connection with the commission of his crimes, though these are usually the causes were assigned as follows: domestic love affairs, etc., 20 per cent; process of arrest (offender killed), 6 per cent; process of arrest (officer killed), 1 per cent; fights growing out of gambling, etc., 3 per cent; quarrels and grudges, with resulting fights, 9 per cent; use of liquor, 5 per cent; business troubles, debts, etc., 2 per cent; miscellaneous causes, 7 per cent; and unknown causes, 47 per cent. City of Memphis, Department of Health, Study of Violent Deaths Registered in Atlanta, Birmingham, Memphis, and New Orleans, 1922.

¹The rewards of offenses against property for gain are as a general thing not great. Except in the case of very rich "hauls," average "earnings" of burglary, robbery, and larceny operations are often less than \$75, perhaps less than \$50.

rather to be regarded as but incidental to his main purpose. With the habitual or professional criminal there is as a general thing a deliberate intent to take property, or to secure loot or booty, by whatever means are necessary and at whatever cost.¹

CRIMINAL GANG

A species of criminal activity of rather acute character at the present day in America is that carried on in concert or through organized groups engaged in the matter as in a sort of business, and at times of a highly commercialized or syndicated character. Its leading form is the gang.

With the gangster there comes into being, not an occasional or isolated crime, or one easily caught up with, but a series of crimes, often so engineered and executed as to baffle pursuit and capture. There is created a band of modern banditti, making of itself a formidable organized body, accoutred and generated on the order of a military troop, and prepared to do battle if need be with the duly constituted officers of the law, or with society itself.

Offenses of the gangster are directed primarily against property for gain—together with whatever other offenses may be necessary in effecting this end. Included may be offenses against the person, such as assault and homicide, these being generally perpetrated for the promotion of, or in connection with, the achievement of other objects. A part of the energies of the gangster are devoted to the removal of his enemies or competitors, or of those seeking to divide his field or venturing to intrude upon or to interfere with his sphere of operations. His wrath may also be turned against any who show inclination or have part in bringing him within the reach of the law. Not seldom there may ensue warfare of one gang with a rival gang.

Quite frequently the gangster is particularly concerned or associated with the profits accruing from illicit transactions in the sale of liquor, or bootlegging, in gambling, or in vice. There may also be embraced in his schemes raids upon collections of money or other valuables, in the form of larceny, robbery, burglary, or general dealings in stolen goods. At times these are to be regarded rather as incidental to or as offshoots from the main or central policy; at other times they constitute new and distinct sources of income.

To be added in some instances to the activities of the gangster

¹See also chapter on Recidivism.

is that species of crime that has come to be called "racketeering." Itself a form of extortion, its operations principally consist in the compelling by sheer intimidation, with whatever measures of direct violence are necessary, of certain business institutions, especially smaller ones, to join more or less supposititious associations. Sometimes the offense becomes of aggravated and bolder character, and with wider ramifications. In its movements there may be promotion from or collusion with corrupt business men, corrupt labor leaders, or corrupt politicians, the gangster element standing by to apply the needed coercion. Groups whose occupation is racketeering have even been known to be availed of to supply protection to legitimate business institutions against the attacks of other racketeering groups.

The calling of the gangster is often not long in becoming of professional character. He may be engaged in cold-blooded fashion as a hired mercenary for the perpetration of some criminal act, possibly homicide or destruction of property, against the enemy or prey or victim of his employer.

Activities of the gangster may be extended even into political fields, perhaps with bargaining with corrupt elements which offer him reward or protection for what he does in their behalf—as repeating in elections, intimidation of voter, stuffing of ballot box, and like deeds. Now and then he may be so highly set up that he can conduct more or less open negotiations with public officials.

A situation to be reckoned with, especially in the apprehension of offenders, arises from the methods on the part of a certain type of offender, often though not always the gangster, of the removal, not only of those who happen to stand in the way of his general operations, but of those, particularly a former associate or companion, who make disclosures ("squeal") to the officers of the law. Their taking off is usually attended to quietly and secretly, and very frequently in undetected fashion.

ALIEN CRIMINALS

A distinct contribution to criminal activity in the United States is made by certain foreign-born groups, who perhaps have not been without criminal proclivities in their old country, or have developed them after arrival in their new country—having become impressed with the possibilities of profits obtainable from predatory exploits. Some of these groups form ready material for the gangster. Not a few pass into this line of business

from lack of contact with helpful American influences, or because of the relative ease of operations in the crowded ways of city life.

The problem here is mainly the prevention of the entry into America of such characters, with whatever tightening up of immigration laws is necessary, and with all due action to ward off illegal ingress. Deportation should perhaps be a recourse of indefinite duration (now allowed for five years). All movements in this direction should be with the coöperation of the foreign country concerned, or with the country of the original emigration. Measures should be included to prevent the subsequent return to the United States of the misdemeanant.

INFLUENCE UPON CRIME OF DISREGARD FOR LAW BY RICH

Conditions also concerned with the sowing of the seeds of crime, especially offenses against property for gain, though of quite different caliber and scope, are those in which the fundamental consideration consists in the enjoyment of wealth, or rather of great wealth.

Although much the larger portion of transgressors against the law are possessed of relatively little means, there are some among them with considerable or with vast wealth, and perhaps with corresponding influence or power; and from time to time these unhappily, whatever the form or manner of their wrongdoing, come to feel a certain immunity with respect thereto, or a certain sense of being above the law, so far as concerns the just deserts of their acts, or their paying the penalty usually exacted of men of lesser fortune. Their wrongdoing sometimes has reference to the operations of "big business," sometimes to the exploitation of natural resources, and sometimes to other, and perhaps lesser, matters. With these operations are to be included the obtaining of special favors or privileges on the part of some business enterprises, which are, if not directly outside the law, contrary to all ethics, good morals, and fair dealing. How far the lawlessness of the rich serves to encourage or to incite or to instigate or to propagate criminal behavior in the community, there is little way of knowing. But we may be sure that in consequence the enforcement of the penal law in general is made the more difficult, that a severe strain is placed upon the machinery and the morale of criminal administration, that the operations of even-handed justice are impeded or throttled, that

the respect which the law should supremely have is loosened and enfeebled, that examples are set up of law-breaking, or of escape from penalization, the effects of which may be deep-seated and widespread, and that the number and the strength of potential criminals are as a result magnified.

Of like sinister import are the alliances between individuals or organizations seeking some particular indulgence and the powers of politics. Not greatly different is the rapprochement or collusion, direct or indirect, with the underworld on the part of apparently respectable citizens or institutions, or even public officials.

SITUATION AS TO CERTAIN FORMS OF FRAUD AND LIKE OFFENSES

It is a sad commentary upon the civilization of to-day that there are few contrivances or processes introduced into the business world but what are immediately seized upon for the advancement of criminal ends. There are certain forms of offenses against property for gain, especially embezzlement and offenses on the order of fraud, cheating, swindling, etc., together with various credit frauds, for which, under modern economic and commercial conditions, a rather special technique of protection will have in greater or less part to be built up.

"FENCE" IN CONNECTION WITH POSSESSION OF STOLEN PROPERTY

The "fence," or traffickers in stolen goods, including those who incite or instigate such practices, has become of serious consequence in modern commercial life. The chief objects affected are articles of or materials for clothing, automobiles, and jewelry. In some areas a very large part of larcenies, burglaries, and robberies depend upon the system. In the larger cities nine-tenths of stolen goods are said not to be recovered. The crime is made the more difficult of detection by reason of a sort of chain through which operations are conducted. These may be of wide ramifications, sometimes of interstate character, under skilled and wary leadership. The matter may start with hold-up men, sneak thieves, or other actual criminal takers; it may extend through various middlemen, including cash buyers, second-hand dealers, pawnshops, junk shops, peddlers, and the like—finally reaching the hands of responsible parties who buy the stolen property, not knowing the full circumstances (though sometimes failing to make sufficient effort to ascertain), and perhaps selling

it to quite innocent purchasers. There may be a master mind back of the whole proceedings, who organizes and finances the enterprise, engages the actual perpetrators, furnishes whatever of capital or tools may be needed, and perhaps affords all necessary protection throughout. Through him an outlet or market may be provided, and through him the booty eventually converted into cash. He is often the mainspring of professional thievery. His operations may extend as far as the corrupting of truckmen in their conveying or handling of merchandise. He may even have a part in the operations of swindling, credit frauds, fraudulent bankruptcies, faked arson or burglary cases, etc. The "fence" encourages and promotes crime in general. Thefts would be greatly diminished without him.

To deal adequately with the "fence" for stolen goods, there are necessary certain changes in the criminal law. There should be clearer and more far-reaching definition of what constitute "stolen goods." Possessors of doubtful property should be required to explain how they came by it. They should also be required to make diligent inquiry when offered articles for sale. Auction sales should be under more strict account. Special regulations should apply to itinerant and transient cash buyers, with the inclusion of a license for their operations. Pawnshops and second-hand stores might be put under a greater degree of surveillance. They should be required to make frequent reports of their receipts. For particular kinds of business enterprises the location of warehouses or storage facilities should be made known to the public authorities. Heavy penalties should be inflicted upon the "fence," no matter whether the original stealing was a serious or a light offense; they should be at least as heavy as those of the agent or original taker.

Really to meet the problem of the "fence," there will probably have to be material modifications in the law of evidence which at present forbids acceptance of the testimony of an accomplice in a crime without corroboration. This is often the only way of obtaining evidence in the entire transaction; and the jury may be allowed to take it for what it may be worth.

FIREARMS IN CONNECTION WITH HOMICIDE

The pistol or gun is a powerful factor in the matter of crime. It is the means used in practically three-fourths of homicides. Possession and carrying of firearms is an all too frequent American practice. They can be obtained with no great difficulty—in

some sections being displayed in shop windows, and nearly everywhere procurable by some means. (The ratio of homicides by firearms in the United States (1926) per 1,000,000 of population is 61, by cutting and piercing instruments 10, and by other means 14.)

The manufacture, transportation, and sale of firearms, or their promiscuous obtaining, will have to be greatly curtailed. Possibly a record should be required of all firearms manufactured and of their disposition, or of all hands into which they may pass. Sales should be only to duly authorized persons. Transportation should be carefully regulated (now in general forbidden through the mails). In addition, a license might be required for the possession of firearms. A special tax might be imposed for their manufacture or possession. They should not be allowed in pawnshops. The general aim should be that few besides officers of the law should have access to dangerous firearms. Cartridges and ammunition in general will have to be dealt with in similar manner.

Special measures are to be taken to see that firearms do not fall into the possession of criminals. When they are cut off from a supply, their criminal tendencies will be greatly curbed. Offenses in which firearms have a part, whether used or not, should receive added penalty.

Measures will also have to be adopted sooner or later with regard to knives, poisons, explosives, and other means which may readily be employed for the taking of human life. (Hospitals and like institutions should be required to report with the fullest possible dispatch any attention to persons suffering from traumatic injuries.)

AUTOMOBILE IN CONNECTION WITH CERTAIN OFFENSES

The automobile, a particular instrument for the commission of crime, especially in facilitating the escape of criminals, forms an acute problem of modern times, and will require the best of thought to meet it. It has come to be one of the most effective agencies for the perpetration of crime ever introduced into human society. From the point of view of the criminal it constitutes a well-nigh perfect means of approach to the place of the contemplated crime, and of escape therefrom. It is swift, silent, unnoticeable. It is lost in the swarm of motor vehicles upon the streets and highways to-day. The stolen car is the one mainly employed in the forays of the criminal. Its identity is concealed

with no great difficulty, and in due time after the commission of the offense it may be abandoned if necessary, with little trace of its former users. Flight of the criminal could not be easier.

It is especially for such crimes as larceny, burglary, and robbery that the automobile proves of greatest usefulness to the criminal, though it can be used practically as well for crimes against the person and for other crimes. For a descent upon a massed quantity of currency or other valuables, as a bank, jewelry shop, or payroll escort, or upon an unprepared individual, the automobile is without an equal. (In Chicago the automobile has had some part in one-sixth of indicted crimes.)

The automobile bandit belongs to a criminal group of his own. Here perhaps the criminal comes nearest to being a professional. The cold, calculating, desperate criminal is at his worst with the automobile.

ORGANIZED VICE

To help reduce the social evil, especially in the form of organized prostitution, several measures may be resorted to. Segregated vice districts at the outset are to receive no recognition or toleration. Such districts do not in fact segregate; they openly encourage and flaunt vice. They breed corruption in general. They make the whole matter of this form of vice the more difficult to deal with. A strict curb, furthermore, is to be placed upon the evil, to keep it from showing its head anywhere.¹

¹ For houses or apartments devoted to purposes of prostitution there may well be called into requisition at times so-called padlock laws, or red-light and abatement laws. A building so used may be declared a public nuisance, original action being taken by a public official or by a citizen. Furniture and fixtures may be ordered sold. The building in question may have to remain closed for a specified time, as one year, or until there is guarantee of different use. The law may be made even more effective in having the burden of proof placed upon the owner as to the character of the tenancy. The general repute of the place may be accepted as evidence. Two convictions for prostitution in the same house within a given time may be presumed knowledge on the part of the owner. A "tin-plate" law, requiring the name of the owner of property to be placed thereon, may prove of value for purposes of identification. Hotels and rooming houses are to be duly licensed, with severe penalties meted out for their use for immoral purposes. Road houses might well be under the surveillance of a rural police force. There should likewise be strict regulation of automobiles for hire—both as to their use for wrong practices and as to their use as means of conveyance to improper places. Public roads should be duly patrolled to prevent automobiles halting for evil purposes. Public dance halls and other places to which questionable characters may resort should also be

Cases of moral delinquency on the part of females should be heard in a special court—a morals court or a court of domestic relations, or perhaps a juvenile court for younger offenders.

The fining system for prostitution should be abolished. On the payment of the fine imposed the offender simply feels licensed to ply her trade still. Short-term sentences are equally inefficacious. After conviction of a certain number of offenses within a given period, the indeterminate sentence in some institution should be imposed. Dismissal therefrom should be allowed only after careful consideration and when moral relapse may be guarded against as far as possible. Mental helps should be availed of in the determination of fitness for release. When release is permitted, it should be in the form of parole, so as to forestall any possible return to old ways. During confinement in prison or reformatory there should be separation from vicious or hardened cases. Every effort should be put forth for moral rehabilitation, including instruction and development of character.¹

Immorality in feeble-minded women constitutes a very difficult problem. The only recourse here is their segregation away from the rest of the world, however expensive this procedure may be. It is the only efficacious remedy which society has.

Above all else, however, it is to be remembered that the one really effective measure against the evil lies in the mighty, unending battle of moral forces. Here alone will society find its securest protection. Moral education, especially for youth, is to have supreme regard.²

licensed, the license to be revoked upon the known admittance of such characters. In some cases bond as well may be required. A further corrective of the social evil, logical as well as just, is that laws as to sexual immorality be made to apply to men equally with women.

¹ Laws as to age of consent, or laws specifying the age at which a female may consent to the surrender of her virtue—designed primarily to protect innocent girls from the wiles of evil men—should in many instances set forth higher ages, a tendency to-day to be observed. (At one time in common law this age was as low as seven years.) In different States at present this age varies from ten to eighteen, in most from sixteen to eighteen. The age of consent should correspond with the age of juvenile delinquency.

² Causes of prostitution and immorality are manifold: unbridled passion; mental defectiveness; craving for excitement, both natural and artificially stimulated; untoward home conditions; allurements of pleasures or amusements under seductive guise, perhaps away from the home, or perhaps through forbidden channels; faithless love; ignorance; use of intoxicants or of narcotic drugs; extreme poverty or low wages, with little outlet for desire for normal recreation or amusement, or with dulling of moral sensibilities; excessive desire for finery or luxury or higher levels of comfort;

RELATION OF DRINK OR DRUGS TO CRIME

The connection between crime and alcohol or intoxicating liquor has always been close. Alcohol leads to crime, on the one hand, in lessening self-control, weakening the will, reducing resisting powers, and dulling the conscience, and, on the other hand, in inflaming the passions, exciting to anger, and driving to unpremeditated misdeeds. The associations of those who drink heavily or to excess are often with vicious or depraved characters, and surroundings are often of a demoralizing sort. Alcohol has played a notable part in the disruption of the home, or in the desertion or nonsupport by the natural breadwinner of the family, with all that this involves in the causation of crime.

In every prison a considerable number of prisoners trace their downfall to drink, the proportion varying in different prisons. A considerable number of juvenile delinquents likewise point to one or both parents who are moderate or heavy drinkers, the proportion generally ranging from one-fifth to two-fifths, sometimes even more. By the Committee of Fifty, an organization concerned with the problem of intoxicating liquors, and existing before the time of National prohibition, intemperance was said to be a contributing factor in practically one-half of major crimes and the chief cause in almost one-third.¹

Narcotic drugs have an effect upon crime similar to that of alcohol, sometimes a more pronounced or more serious effect. It increases willingness to commit crime, stimulates recklessness, and eliminates or reduces later feelings of remorse. In certain penal institutions, especially workhouses in some cities, the proportion of drug addicts is very high.

For long among men there has been a dream that a better social order, together with a great reduction of those forms of crime following upon the use of intoxicating liquors, could be established if the traffic therein could be kept within rigid limits, or be entirely suppressed by the adoption of laws prohibiting their manufacture, sale, and transportation. This policy America as a nation has decided to try; and there is now being witnessed a gigantic experiment to see whether this policy is a wise one, acceptance by society of double standard of morals; direct commercialization of vice; lowered standards of morality in community; false teachings as to personal conduct and responsibilities; shutting of eyes to or winking at harmful or dangerous tendencies; lessened emphasis upon self-control; etc.

¹Committee of Fifty for Investigation of Liquor Problem, *Liquor Problem*, 1903

and whether the land may not be made a far better land to live in, with eventually a vast reduction in crime directly and indirectly in consequence.

There is little question to-day as to the desirability of the suppression of the traffic in narcotic drugs.

REGULATION OF CERTAIN MINOR EVILS

Possibly there should be more stringent regulations or sterner treatment for certain minor forms of wrongdoing of different kinds, which are injurious to public morals or public policy or public peace. These are usually of insidious growth, at first apparently trivial and of little consequence, and hardly worthy of the law's regard, but gradually warping right conceptions, cultivating vicious tastes, and perhaps eventually resulting in confirmed evil practices or in crimes of serious character. Gambling is of especial moment, leading as it does to dissipation and awakening a parasitic attitude or a tendency to gain something at another's expense. How much crime has its roots in gambling practices cannot be known, but the amount must be great. No special privileges to or protection of a gambling institution should ever be tolerated.

SUICIDE

Suicide constitutes a form of wrongdoing or anti-social conduct requiring attention, though the victim is past earthly jurisprudence.¹ It is a matter most difficult to deal with. The per-

¹ Causes of suicide are various—insanity, deranged nerves, ill health, mental or physical suffering, economic difficulties, financial losses, commercial failures, poverty, loss of employment, overwork, romance, jealousy, unrequited affection, domestic troubles, depression, loneliness, lack of self-control, relaxation after a period of discipline, together with the feverish unrest and growing strain and complexity of modern life. Mental instability is perhaps the foremost single cause. Physical troubles likewise have some antecedent part in the matter—venereal disease, arteriosclerosis, eyestrain, spinal curvature, drug addiction, drunkenness. Suicide sometimes results from trivial causes, as the death of a pet or a fancied indignity, or even from a desire for a new experience. War reactions, especially on the part of ex-soldiers, may have influence. From limited and somewhat unsatisfactory statistics, it would appear that mental suffering and physical suffering are each responsible for about one-fifth of suicides. Economic difficulties probably come next. Among men financial troubles, drunkenness, etc. are the more frequent causes. Among women mental troubles, domestic unhappiness, and romance are apparently the more prevalent. Among children neglect or mistreatment at home, dissatisfaction with home conditions or school, fear of contemplated punishment are factors. Too early

petrator often takes precautions to keep his intended act from being known beforehand, and thus is free from possible inter-

marriage sometimes leads to self-destruction, especially on the part of the wife. Suicide is often accompanied by murder, the one following the other. This is notably the case with husband and wife. With the entire problem of suicide heredity has no small connection. A tendency in this direction seems to exist in some families—perhaps a predisposition or impulse or feeble inhibitory powers, or some physical or mental trouble that may lead to suicide. To a great extent suicide indicates more or less of unsoundness of mind. Effects to counterbalance the tendency are often of little avail, whether by reason or by moral instruction. The leading means by which suicide is committed is firearms, about one-third of all in the United States being attributable thereto. It is followed in order by hanging or strangulation, poisoning, asphyxiation, cutting or piercing instruments, drowning, jumping from a high place, crushing, etc. The chief poisons employed are carbolic acid, corrosive sublimate, strychnine, lysol, arsenic, and cyanid of potassium. The means employed often depends upon their accessibility. Among men firearms, hanging, and cutting or piercing instruments are more often availed of; among women, poisoning, asphyxiation, drowning, and jumping. Among children and youth shooting and poisoning are the chief means. The suicide rate is much the highest in the western parts of the United States, especially in the Pacific west. It is lowest in the south. The rate (in 1927) for the country as a whole is 133 per 1,000,000 of population. In New England, the Middle Atlantic States, and the North Central States it is 148 (1924); in the southern States, 98; in the Rocky Mountain States, 206; and in the Pacific States, 271. The urban rate is 147, and the rural 98. (For 1927 the respective ratios are 162 and 107.) The rate is somewhat higher for the foreign-born than for the native population. In the south the rate is practically four times as great among whites as among Negroes, or 112 as against 33. The ratio is over three times as high for males as for females, or 186 as against 58. (Among Negroes the respective rates are 70 and 27.) Suicide takes place at all ages of life—especially with advancing years. With women it seems to be concentrate in late youth and early and middle adult life. Suicide is relatively rather prevalent among the well-to-do and well-educated classes, especially among the professional classes and among persons in advanced business positions. Physicians, lawyers, professors, ministers, actors, editors, authors, executives and owners of large business or commercial undertakings, and even college students all have rather high rates compared with the rest of the population. The rate is higher for salaried classes than for wage-earners. Suicide seems to be a concomitant of civilization, or at least of modern conditions of life. Within the last century, especially the last half century, suicide has appreciably increased. In the registration area the ratio to general population in 1900 was 115; in 1910, 160; in 1915, 167; in 1920, 102; and in 1927, 133. The apparent slackening in the rate in more recent years is perhaps in some measure attributable to the extension of the registration area to sections having considerable Negro populations, among which the ratio is relatively low. With females suicide is perhaps increasing a little more rapidly than with males. In 1904 the respective ratios were 224 and 69; in 1910, 239 and 75; in 1914, 236 and 74; in 1919, 250 and 100; and in 1924, 186 and 58. If suicide is on the increase among women, it is doubtless

ference or prevention. Several means, however, may be availed of to a greater or less extent to check the evil, even if only partial success is to be expected. Special efforts may be made to reach and minister to would-be suicides, as is done by the Salvation Army in particular. Restriction of sales of firearms, poisons, and other possible means of self-destruction would not only remove means for the purpose, but also suggestions to this end. There are also great possibilities in the adjustment and smoothing out of mental vexations and disturbances, something only beginning to be understood. Education may be of some help in the matter. Religion and moral instruction are likely to be the most efficacious. Man must be made to understand that his life does not belong to him alone, to do with as he may momentarily please.

LYNCHING

A serious blemish upon the criminal process of the United States, and upon its civilization as well, has been the forcible taking of the law for the execution of supposed offenders into the hands of a section of the population, or of a mob, a practice known as lynching. Sometimes it has been resorted to as a substitute for orderly judicial action, and sometimes simply as an outburst of passion or of hate.

From 1882 to 1928 there were 4576 lynchings in the United States. They have occurred in all but seven States. Five-sixths (of more recent years nine-tenths) have been in the southern States. Four-fifths (of more recent years nine-tenths) of the lynchings have been of Negroes. About 2 per cent have been of women. The cause of the lynchings has been assault or attempted assault upon women in less than one-fourth of all cases. Over one-third have been for murder, less than one-fifth for other crimes against the person, one-tenth for offenses against property, and the remainder for miscellaneous causes.¹

From 1889 to 1900 lynchings averaged about 150 a year; from 1900 to 1910, about 90; from 1911 to 1920, about 70. In 1921 there were 59; in 1922, 57; in 1923, 33; in 1924, 16; in 1925, 18; in 1926, 30; in 1927, 16; and in 1928, 9. Lynchings are now

largely due to their increasing participation in the affairs of the world. Suicide seems also to be on the increase among children. On statistics as to suicide, see in particular Census Bureau, *Mortality Statistics* (annual); F. L. Hoffman, *Suicide Problems*, 1928.

¹For statistics as to lynchings, see in particular *Negro Year Book* (annual).

showing a steady decline from year to year. In addition, there are constantly increasing reports of the frustration of attempted lynchings by public officials, and of the bringing of lynchers to justice. The time cannot be far distant when this stain upon American life will have all but disappeared.

The decline in lynchings is due primarily to the rapidly growing public sentiment against it. Much is owed to a deliberate educational campaign in the building up of this sentiment, in which the church and the press have had a large part. The movement of the Negro from the south to the north of recent years, with the necessity of making life more satisfactory to him in the south, has not been without influence. The threat of action on the part of the Federal Government has also doubtless been of some weight.

There are several remedies for checking the lynching evil. Against it there may be invoked already existing laws of two kinds—laws as to murder and laws as to usurpation of powers of government delegated to the courts or other public officials. In addition, the law may require that the sheriff of a county in which a lynching occurs be penalized by removal from office, or it may expressly allow the family of a lynched person to sue the county for damages. Direct action in the matter on the part of the United States Government is permissible, or authorized in the Constitution, on the ground that it has power alike to protect its own citizens (citizens of the several States also being its citizens as well) and to uphold the right of trial by jury.¹

Stricter enforcement of the law in general, with quicker and surer punishment of the guilty, will remove all possible excuse for or instigation to lynching. Better protection of life and property will also have a helpful effect. This is especially true with the extension of the State police system, including rural police. There will thus be more effective means both for the prevention of crime and for the checking of possible mob violence.

Better race relations, so far as lynching of Negroes is concerned, will do most to end the evil. Like results are to be ex-

¹The most important Federal anti-lynching law proposed provides that any proper public official of a political division of the United States failing to make all reasonable efforts in apprehending or prosecuting any person participating in a lynching is guilty of a felony, punishable by both imprisonment and fine. Persons composing the mob may be punished by life imprisonment. The county concerned may be required to forfeit \$10,000 for the benefit of the relatives of the person lynched. Trial may take place in a Federal court if State officials fail to act. Special Federal laws upon the subject of lynching have so far failed of enactment.

pected from education in general, and especially in relation to the matter of lynching as murder.

POSSIBLE GENERAL CLASSIFICATION OF OFFENDERS

There have been frequent attempts to classify criminals according to condition, associations, habits, environment, etc. They have been designated born criminals, criminals by passion, habitual criminals, occasional criminals, political criminals, etc. To-day a broader classification, to some extent based upon what has now been presented, would be: criminals who are mentally defective, or those suffering under some form of mental disability; occasional criminals, or those giving way to a criminal act as a result of some peculiar or extraordinary situation or by force of circumstances; and habitual or professional criminals, or those who have become more or less hardened in their social attitudes, and who sometimes pursue crime as a sort of career—whether wholly or partially. The first of these classes is to be characterized as a biological grouping; the second and third, rather as social groupings. All overlap in greater or less measure.

PART VI
FORMS OF PUNISHMENT FOR THE
OFFENDER

CHAPTER XXXVII

GENERAL FORMS OF PUNISHMENT IN THE UNITED STATES

The forms of punishment employed at present in the United States are in the main capital punishment, imprisonment for a longer or shorter period (perhaps at hard labor), and fining. In connection with imprisonment is to be mentioned loss of citizenship, practically the only civil disability now remaining, and really a part of this form of punishment.

In addition, certain higher officers of the state are subject to impeachment, with consequent removal from office as a penalty for their wrongdoing. A means of punishment for particular offenses, especially offenses in connection with the exercise of the suffrage or the holding of office, may consist of the withdrawal of such privilege.

Flogging (apart from any possible use as a means of discipline in prisons) as a means of punishment is permitted in one or two States for a few minor offenses, especially wife-beating. The defense of this method is its economy and expedition; but its general brutalizing effects have barred its extensive use.¹

In the case of corporations, which have an existence or permission to do business only at the authorization of the State, an appropriate means of punishment is always at hand—revocation of charter or of right to do business in the State. Corporations may, moreover, be fined as such. Officers are duly subject to regular punishment for their offenses.²

¹ Possibly sterilization is to be added as a means of punishment, though its purpose is different. It has been authorized in certain States in connection with particular offenses. Sentiment to-day may be said to be rather against it, especially as concerns prisoners.

² At times in some communities the form of treatment administered for certain offenses, such as disorderly conduct, petty larceny, etc., is the sending or driving on of the offender to other communities. This plan simply serves to spread the trouble, and adds to the burdens of other communities. For some foreign-born malefactors deportation may be permissible.

CHAPTER XXXVIII

CAPITAL PUNISHMENT

THEORY OF CAPITAL PUNISHMENT

The most serious method of punishment possible in human society is the death penalty, the exacting of the life of the offender for his offense. In making use of such means of punishment society incurs a grave responsibility, a responsibility of an extent and nature lying in no other method of punishment.

The time-worn arguments for capital punishment may be summarized, their respective values being left to one's own judgment: (1) Capital punishment is the most powerful known deterrent of crime. (2) It is in the interests of elemental justice—a life for a life. (3) The offender may be a continuing danger and menace to society, and it is best to have him permanently out of the way. (4) The aim of punishment in imprisonment may be defeated by commutation of sentence or pardon. (5) A person sentenced for life, with no fear of worse punishment, may be emboldened to go to any lengths—a wrongdoer perhaps being all the more tempted to kill his victim to remove a witness, or to kill his keeper to effect his escape. (6) When imprisonment is the highest form of penalty for desperate criminals, they constitute not only a danger, but a great strain upon the security and discipline of the prison. (7) Fear of execution is the strongest incentive to repentance, so far as this is the aim of punishment. (8) If capital punishment were abolished, there would be greatly increased incentive and excuse for mob action or lynching. (9) Capital punishment is relatively inexpensive to the state. (10) In pleas for the doing away with capital punishment little is heard of the rights or claims of the victim of the original wrong. (11) It sometimes happens that where capital punishment is rigorously applied, there is a notable falling off in the number of murders. (12) In some States where capital punishment has been abolished, it has been restored in consequence of the increase in murders. (13) Capital punishment need not be looked upon as a retaliatory measure, but simply

as notice to the would-be murderer of the consequences of his act. (14) The rights of society, including its safety and protection, take precedence over all other considerations.

Conversely, the arguments against capital punishment may be outlined: (1) Capital punishment represents nothing more than the survival of the ancient conception of *lex talionis*—an eye for an eye—a conception which society is discarding. (2) Society has no right to take life, no matter what has happened. (3) The death sentence, once executed, is beyond recall; if there has been error, there is no possibility of rectification. From time to time there has existed a brooding doubt over a community as to the actual guilt of a person executed. (In certain retrials persons once sentenced to death have been found not guilty.) (4) Legal executions have a generally brutalizing effect upon the community. (5) Capital punishment may permit no opportunity for repentance. (6) There is no adequate evidence to prove that capital punishment serves as a real deterrent. (7) Those who have taken life are not necessarily hardened or hopeless offenders. In some prisons the majority, perhaps nine-tenths, of those guilty of murder in the first degree have had no previous prison record—their act of killing being their one case of offending against the law. (8) There is no indication of an increase of homicides in those States which have abolished capital punishment. There seems to be little connection between homicide rates and capital punishment. Some States without capital punishment have actually fewer homicides than some States with it.¹ (9) Lynchings have shown no increase with the abolition of capital punishment. (10) The offender may be mentally affected, in which case capital punishment is concededly the wrong procedure. (11) Capital punishment is really ineffective and useless as a means of punishment, because of general aversion to it in many quarters. Under it (a) juries will often not convict; (b) where they do convict, it is often with the hope or expectation that the Governor will exercise his right to pardon; (c) it the more readily induces a plea like that of insanity; and (d) Governors are the more inclined to exercise their pardoning power. (12) With capital punishment abolished, punishment would be surer. Juries would be more willing to convict, and judicial machinery would operate more effectively. (13) Life imprisonment may be regarded as severe enough punishment. It may be removed from the possibilities of pardon. It may also be made

¹This may be indicated by contrasting the ratios for homicide in different States.

little subject to commutation. At present there are relatively few pardons or commutations with respect to life imprisonment. (14) The supposed exemplary features of capital punishment are largely given up in the increasing measures for the concealment of the actual execution. (15) Executions are sometimes attended with improper and offensive performances, especially in the publication of certain details. (16) Capital punishment diverts attention into wrong channels. Attention should be focused upon the prevention of crime and upon swift administration of justice. (17) The death penalty as a means of punishment is incompatible with modern theories of punishment, with their insistence upon investigation, application of subjective tests, individualization, reformation, etc. Persons guilty of crimes punishable by capital punishment should not be exempted from the treatment extended to other offenders. (18) Capital punishment is largely imposed, not upon those guilty of the most heinous offenses, but upon those least able to defend themselves.

METHODS OF EXECUTION

For long the method of execution in capital punishment has been hanging. To-day practically one-half of the States have substituted electrocution, New York in 1888 being the first to do so. Shooting or hanging is permitted in Utah, and asphyxiation in Nevada.

Executions for the most part take place at the State prison, only a few States now permitting them in local county jails. They have become more and more private affairs, most States allowing to be present only officials and a few other persons, perhaps a maximum or a minimum number of specially designated classes.

EXTENT OF USE OF CAPITAL PUNISHMENT

The number of offenses punishable by death has in general been greatly reduced in the course of time, the one exception to this trend being in recent years with offenses against property for gain, in the commission of which the taking of life may possibly be involved.

The separate offenses for which capital punishment may be inflicted in the United States are almost a dozen in all, though in any one State the number is much less. About one-half of the States of the Union allow it for three or more offenses, about

one-fifth for two, and a like proportion for one. Murder is the offense for which capital punishment is most often inflicted, but it may also be inflicted for piracy, rape, burglary (especially as to inhabited dwellings), arson, robbery (especially with deadly weapons), wrecking of a passenger train, etc. Over nine-tenths of all cases of capital punishment are for murder. Practically all the remainder are for rape.

Capital punishment is now abolished in eight States—Michigan, Kansas, Maine, Minnesota, North Dakota, Rhode Island, Wisconsin, and South Dakota. (In one or two of these States capital punishment is permitted in exceptional cases, as in the killing of a prison keeper.) The first State to take action was Michigan in 1847. Certain other States for a time abolished the death penalty, but later restored it—Colorado, Iowa, Washington, Oregon, Arizona, Missouri, Tennessee, and New York.

The actual situation as to capital punishment, however, is of more adverse character than would be indicated by the list of States which have formally abolished it. Even in those States where the law authorizes this form of punishment, it is not always obligatory. In over five-sixths of such States the jury (in a few cases the court) is empowered to offer in its place imprisonment for life or for a certain number of years.

When actually permitted by law, capital punishment is but sparingly inflicted. In all, the number of persons legally executed in the United States averages about 100 or a little over a year. The proportion of legal executions among all homicides is only a little over 1 per cent. The homicide rate for the country at large (1927) is 87 per 1,000,000 of population; the rate for legal executions is hardly 1. In New York State from 1910 to 1927 of culpable homicides, 9 per cent had execution. Executions are becoming fewer. The proportion of death sentences in 1923 is only one-half of what it was in 1880.¹ Of inmates in penal institutions but 0.2 per cent are under sentence of death. In murder cases as a rule juries give life imprisonment much more frequently than the death sentence, possibly four or even eight, times as often. Of those sentenced to capital punishment in some States, the larger number escape it (generally through commutation or pardon); while in others the larger number suffer it. The proportions vary in different States. In New York State of persons sentenced to capital punishment from 1889 to 1927, 60.9 per cent were executed; 7.1 per cent died, became insane, or were awaiting execution; 12.4 per cent had case on appeal remanded or reversed,

¹ See pp. 358, 359.

of whom 9.3 per cent were resentenced and executed; 16.9 per cent had sentence commuted to life imprisonment; 0.6 per cent were pardoned; and 1.6 per cent had special commutation.¹

PRESENT TREND WITH RESPECT TO CAPITAL PUNISHMENT

There can be little question that sentiment in the United States is moving steadily toward the abolition of the death penalty as a means of punishment for crime. The evolution of this sentiment is evident from several considerations already referred to: the decreasing number of offenses to which capital punishment is made to apply; the increasing requirements that executions be conducted privately; direct abolition of capital punishment in certain States; the leaving of capital punishment as only an optional method of punishment, to be availed of or not in a given situation; and the increasing disinclination of judicial and executive officials, together with juries, to inflict the death penalty.

The growing sentiment against capital punishment is in part due to the objections to it already adduced, and in part to increasing humanitarian sentiments in general. Even if it were desirable, however, as a matter of principle at once to abolish capital punishment, the public in many areas would probably not be ready for it, and there would doubtless be an early reaction towards its restoration. In all consideration of the problem it is to be remembered that it is even more incumbent upon society to devise means for the protection of its members against the hands of the slayer. The matter cannot be effectively disposed of until capital punishment is fully inflicted and in keeping with the intent of the law. It is but little carried out to-day—too little to warrant any determination as to its value or usefulness. When its certainty as a means of punishment has been demonstrated, we shall be in better position to know its worth as a deterrent of murder. But of its eventual disappearance from society, whether sooner or later, there can be no great question.

¹ A considerable part of the statistics in this chapter are, apart from reports of the Census Bureau, from L. E. Lawes, *Man's Judgment of Death*, 1927; *Life and Death at Sing Sing*, 1928.

CHAPTER XXXIX

FINING

THEORY OF FINES

Fining is the simplest, most expeditious, most unobtrusive, and from the point of view of the state the most advantageous method of punishment. To the offender it has the least of disgrace and opprobrium of all. If one has ready means of paying a fine, the system loses not a little of its connotations as a means of punishment. If it has small deterrent effect, it may amount rather to a license fee or tax for the carrying on or indulging in of certain forms of legally disapproved conduct.

Fining attains its character as a means of punishment most pronouncedly when it is applied to persons not in position to pay it, in which case imprisonment has to be suffered in lieu thereof. The theory of a fine in law is that it is a debt to the state, to secure the payment of which one's property may be levied upon; if one is without property one must go to prison, the length of time spent here being supposed to be proportionate to the amount of the fine. Imprisonment for nonpayment of fine is, in fact, a relic of the old rule which authorized imprisonment for private debts—an attitude now long since given up. Fines at the same time were once paid in commutation of imprisonment; to-day the reverse is rather the case, imprisonment being inflicted for failure to pay fine.

Fines are thus the more likely to be paid by those who have the means, or the rich and well-to-do, while the poor, not having the means, must undergo imprisonment, the more degrading form of punishment. In a sense, the poor are specially penalized in the criminal law because of their poverty.

DESIRABILITY AND UNDESIRABILITY OF FINING SYSTEM FOR PARTICULAR CASES

For some offenders often punished by fining, this is hardly the proper procedure, but rather some form of institutional treat-

of whom 9.3 per cent were resentenced and executed; 16.9 per cent had sentence commuted to life imprisonment; 0.6 per cent were pardoned; and 1.6 per cent had special commutation.¹

PRESENT TREND WITH RESPECT TO CAPITAL PUNISHMENT

There can be little question that sentiment in the United States is moving steadily toward the abolition of the death penalty as a means of punishment for crime. The evolution of this sentiment is evident from several considerations already referred to: the decreasing number of offenses to which capital punishment is made to apply; the increasing requirements that executions be conducted privately; direct abolition of capital punishment in certain States; the leaving of capital punishment as only an optional method of punishment, to be availed of or not in a given situation; and the increasing disinclination of judicial and executive officials, together with juries, to inflict the death penalty.

The growing sentiment against capital punishment is in part due to the objections to it already adduced, and in part to increasing humanitarian sentiments in general. Even if it were desirable, however, as a matter of principle at once to abolish capital punishment, the public in many areas would probably not be ready for it, and there would doubtless be an early reaction towards its restoration. In all consideration of the problem it is to be remembered that it is even more incumbent upon society to devise means for the protection of its members against the hands of the slayer. The matter cannot be effectively disposed of until capital punishment is fully inflicted and in keeping with the intent of the law. It is but little carried out to-day—too little to warrant any determination as to its value or usefulness. When its certainty as a means of punishment has been demonstrated, we shall be in better position to know its worth as a deterrent of murder. But of its eventual disappearance from society, whether sooner or later, there can be no great question.

¹ A considerable part of the statistics in this chapter are, apart from reports of the Census Bureau, from L. E. Lawes, *Man's Judgment of Death, 1927; Life and Death at Sing Sing, 1928.*

CHAPTER XXXIX

FINING

THEORY OF FINES

Fining is the simplest, most expeditious, most unobtrusive, and from the point of view of the state the most advantageous method of punishment. To the offender it has the least of disgrace and opprobrium of all. If one has ready means of paying a fine, the system loses not a little of its connotations as a means of punishment. If it has small deterrent effect, it may amount rather to a license fee or tax for the carrying on or indulging in of certain forms of legally disapproved conduct.

Fining attains its character as a means of punishment most pronouncedly when it is applied to persons not in position to pay it, in which case imprisonment has to be suffered in lieu thereof. The theory of a fine in law is that it is a debt to the state, to secure the payment of which one's property may be levied upon; if one is without property one must go to prison, the length of time spent here being supposed to be proportionate to the amount of the fine. Imprisonment for nonpayment of fine is, in fact, a relic of the old rule which authorized imprisonment for private debts—an attitude now long since given up. Fines at the same time were once paid in commutation of imprisonment; to-day the reverse is rather the case, imprisonment being inflicted for failure to pay fine.

Fines are thus the more likely to be paid by those who have the means, or the rich and well-to-do, while the poor, not having the means, must undergo imprisonment, the more degrading form of punishment. In a sense, the poor are specially penalized in the criminal law because of their poverty.

DESIRABILITY AND UNDESIRABILITY OF FINING SYSTEM FOR PARTICULAR CASES

For some offenders often punished by fining, this is hardly the proper procedure, but rather some form of institutional treat-

ment which may be of both custodial and reformatory character. Such offenders are mostly drunkards, prostitutes, and persons guilty of disorderly conduct in general. For them the system of fines affords no help, nor does it afford any protection to society. It merely allows them, on the payment of a small amount to the state, to continue their evil ways—in fact, often affording them positive encouragement therein. It may be of a quite demoralizing nature—perhaps with no deterrent values. On the other hand, it imposes a heavy burden on one's family, takes the time of courts, wastes public money, fails to discriminate as to the type of the offender involved, and provides no constructive treatment.

Apart, however, from the matter of "treatment" for offenders, fining in some respects, and for some offenses, may constitute a desirable method of punishment. The fine constitutes an immediate addition to public revenues; it reduces the costs of support of public institutions; it avoids the stigma attached to imprisonment; it avoids the hardening and contaminating contacts of prison life; it permits the sentenced offender to continue the support of his family; it is more flexible and adjustable for different grades of offenses. In addition, it may allow the advantageous operation of a probation system, with its reformatory influences, especially if payment of fine is made on the installment plan. Another advantage is that it permits opportunity for restitution to the injured party if this be thought desirable and is feasible.

MANNER OF IMPOSING FINES

Fines may be imposed according to one of several methods: (1) in addition to imprisonment; (2) as an alternative to imprisonment; and (3) as the only means of punishment in a given case (imprisonment being provided for nonpayment). When a fine is imposed, there may be a maximum and a minimum limit, or there may be a maximum limit only, or there may be a minimum limit only, the actual amount usually being left to the discretion of the court. Excessive fines are forbidden by the Federal Constitution, as well as by the Constitutions of some States. In measuring the extent of imprisonment to be apportioned for a given fine, frequent procedure is to hold one day of imprisonment as the practical equivalent of one dollar of fine, and occasionally of 50 cents, or of a smaller amount still. Often for a later offense the amount of the fine is increased. In some cases

if desirable it may be possible for a fine to be mitigated, or even remitted.

Fines are imposed largely for lighter offenses or offenses of minor character, usually offenses against public peace or order or against public policy or morals, such as violation of city ordinances, gambling, drunkenness, disorderly conduct, etc., these in some areas, especially large cities, constituting the greater part of criminal acts. Fines may, however, be imposed for more serious offenses, especially in connection with a sentence of imprisonment.

For most cases, an offender sentenced to payment of a fine, but without means of immediate payment, should be allowed to make it on the installment plan. This plan is steadily winning its way into popular favor, and in time will probably be general. With the growth of the probation system, there will be added incentive to the use of the installment arrangement.

To what extent fines are resorted to as a method of punishment, we do not know. But it must be considerable. A little over one-half (52.9 per cent) of all commitments to jails and work-houses are because of nonpayment of fine.¹ (In some cities the proportion is over two-thirds or three-fourths.)

AMOUNT OF FINES

In the table on page 330 is given the percentage distribution of commitments to prisons and reformatories and jails and work-houses for different amounts of fine according to whether sentence included imprisonment and fine, or was for nonpayment of fine, and with respect to each class of penal institutions in the former case (1923).²

Fines imposed in the United States appear to be of rather small amount. This is generally the case alike when a sentence includes both imprisonment and fine, and when imprisonment is substituted for nonpayment of fine. In sentences of imprisonment and fine together, one-fifth (20.5 per cent) of fines are under \$10, over one-third (34.1 per cent) under \$20, one-half (48.7 per cent) under \$50, and three-fifths (61.5 per cent) under \$100. Only 6.3 per cent are of \$500 or over. In sentences to imprisonment for nonpayment of fine, the amount of fine is even smaller. A little under one-fourth (23.2 per cent) are under \$10, three-

¹ See p. 335.

² The statistics in this chapter are taken from report of Census Bureau—Prisoners: 1923, 1927.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS
ACCORDING TO AMOUNT OF FINES UNDER DIFFERENT
FORMS OF SENTENCE

Amount of Fine	Per Cent Distribution			
	Sentenced to Imprisonment and Fine			Sentenced for Nonpayment of Fine
	All Institutions	Prisons and Reformatories	Jails and Workhouses	All Institutions
Total.....	100.0	100.0	100.0	100.0
\$500 or over.....	6.3	26.9	5.1	1.4
Over \$1,000	0.9	7.8	0.5	0.2
\$1,000	1.0	7.8	0.6	0.2
\$501 to \$999.....	1.0	0.9	1.0	0.4
\$500	3.4	10.3	3.0	0.6
\$100 to \$499	32.3	34.4	32.2	9.3
\$200 to \$499.....	11.6	15.5	11.4	3.5
\$101 to \$199.....	9.1	2.0	9.5	2.7
\$100	11.5	16.8	11.3	3.1
\$50 to \$99.....	12.8	5.1	13.2	6.9
\$51 to \$99.....	5.4	0.9	5.7	3.3
\$50	7.3	4.3	7.5	3.7
\$20 to \$49.....	14.6	4.1	15.2	22.3
\$30 to \$49.....	5.4	0.3	5.7	4.5
\$26 to \$29.....	1.6	0.2	1.7	3.4
\$25	4.4	3.1	4.5	8.0
\$20 to \$24.....	3.2	0.4	3.4	6.4
\$10 to \$19.....	13.6	5.4	14.0	36.8
Less than \$10.....	20.5	24.1	20.3	23.2

fifths (60.0 per cent) under \$20, and over four-fifths (82.3 per cent) under \$50.

As would be expected, fines are of much larger amount in connection with sentences to prisons and reformatories than in connection with sentences to jails and workhouses. Over one-fourth (26.9 per cent) of fines accompanying imprisonment in prisons and reformatories are of \$500 or over—a proportion five times as great as is the case with jails and workhouses. Almost one-sixth of fines in connection with the former class of institutions are of \$1000 or over. (The relatively high proportion of fines under \$10 for prisons and reformatories is due in part to the imposition of “costs” of such amount by many courts.)

There are no statistics available as to the amount of fine when it constitutes the sole means of punishment—whether or not it is greatly different from the amounts when both fine and im-

prisonment are inflicted, and when imprisonment is inflicted for nonpayment of fine.

In the following table is given the percentage distribution of commitments to jails and workhouses, as to sentences of both imprisonment and fine and as to sentences for nonpayment of fine, according to amount of fine and according to length of sentence, together with the average amount of fine for different lengths of sentence (1923).

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO JAILS AND WORKHOUSES BY AMOUNT OF FINES ACCORDING TO LENGTH OF SENTENCE

Amount of Fine	Sentenced to Imprisonment and Fine					Imprisoned for Nonpayment of Fine				
	Total	Length of Sentence				Total	Length of Sentence			
		6 M'nths or Over	2-5 M'nths	1 Month	Less than 1 Month		6 M'nths or Over	2-5 M'nths	1 Month	Less than 1 Month
Per Cent Distribution by Amount of Fine										
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
\$500 or over.....	5.1	18.6	6.6	1.4	0.6	1.0	23.2	1.3	—	—
\$100 to \$499.....	32.3	32.3	53.8	36.2	8.9	8.0	64.3	39.8	7.1	0.3
\$50 to \$99.....	13.1	9.3	12.5	18.9	8.9	6.7	11.0	24.9	11.8	2.0
\$20 to \$49.....	15.0	9.7	11.6	16.4	19.4	21.2	1.4	30.1	32.4	17.1
\$10 to \$19.....	13.9	5.3	6.0	16.6	22.7	39.0	—	3.1	42.5	45.4
Less than \$10.....	20.5	24.8	9.4	10.5	39.6	24.1	—	0.7	6.1	35.2
Per Cent Distribution by Length of Sentence										
Total.....	100.0	15.8	23.9	32.8	27.5	100.0	3.9	9.2	22.6	64.2
\$500 or over.....	100.0	57.3	30.7	8.9	3.0	100.0	88.1	11.9	—	—
\$100 to \$499.....	100.0	15.8	39.8	36.8	7.6	100.0	31.6	45.7	20.1	2.6
\$50 to \$99.....	100.0	11.2	22.8	47.3	18.6	100.0	6.5	34.5	40.1	18.9
\$20 to \$49.....	100.0	10.2	18.4	35.9	35.5	100.0	0.3	13.1	34.6	52.0
\$10 to \$19.....	100.0	6.0	10.2	39.0	44.7	100.0	—	0.7	24.6	74.7
Less than \$10.....	100.0	19.1	11.0	16.7	53.1	100.0	—	0.3	5.8	94.0
Average Amount of Fine										
	\$114.63	198.89	165.46	101.93	37.73	45.50	306.36	116.65	36.58	13.94

In general the size of the fine is correlated with the length of sentence, the larger fines accompanying the longer sentences.

CHAPTER XL

IMPRISONMENT

THEORY OF IMPRISONMENT

Imprisonment for crime, when the offender pays for his offense in time, is the most protracted form of punishment inflicted. To the offender it is singularly vexatious, galling, and mortifying. Its peculiar bitterness to him lies in its removal of him from a life of activity and freedom among his fellow men and his confinement behind iron bars and walls of stone. It takes from man something dear to his heart—something prized next to life itself—his liberty.

To the state imprisonment is a very costly method of punishment. It means the incarceration of a part of its population, with their direct loss to its productive forces. The very process of imprisonment entails large expense to the tax-payers. It also demands for its successful carrying on a high degree of administrative skill.

Apart from the matter of "punishment" of the offender, imprisonment has two very important social values: protection of society against the operations of criminals; and the providing of means and facilities for the possible rehabilitation of offenders.¹

Though when imprisonment is imposed, it constitutes for the most part the sole means of punishment, it may have in certain cases, though not usually the more serious felonies, a fine accompanying it. For some minor offenses imprisonment may serve as an alternative to the payment of a fine, this being the case in particular when there is inability to pay the fine. Among imprisoned offenders are to be included a small number awaiting the death sentence.

FORMS OF PRISON SENTENCE

In the following table is given the percentage distribution in 1910 and 1923, of inmates in and of commitments to general

¹ Possible deterrent values of imprisonment are not here considered.

penal institutions (prisons and reformatories and jails and work-houses) according to the nature of the sentence imposed.¹

PERCENTAGE DISTRIBUTION OF PRISONERS IN GENERAL PENAL INSTITUTIONS
BY FORM OF PRISON SENTENCE AT DIFFERENT YEARS

Nature of Sentence	Per Cent Distribution			
	Inmates		Commitments	
	1923	1910	1923	1910
Total	100.0	100.0	100.0	100.0
Sentenced to—				
Death	0.1	0.1	—	—
Imprisonment only	83.4	77.5	36.8	32.8
Imprisonment and fine	11.1	11.1	14.7	8.8
Imprisoned for nonpayment of fine	5.1	11.0	47.4	58.1
Nature of sentence unknown.....	0.3	0.2	1.0	0.3

Of all inmates over four-fifths (83.4 per cent) are sentenced to imprisonment only. A little over one-tenth (11.1 per cent) receive both imprisonment and fine. There are 5.1 per cent imprisoned for nonpayment of fine. Only 0.1 per cent are under sentence of death.

Of all commitments almost one-half (47.4 per cent) are the result of nonpayment of fine. Over one-third (36.8 per cent) are sentenced to imprisonment only. One-seventh (14.7 per cent) receive both fine and imprisonment.

As between 1910 and 1923 there has been a decrease in the proportion of prisoners sent to prison for nonpayment of fine, with corresponding increases for other groups. This may mean that fines are being more readily paid; or that better provision is being made for their payment, perhaps by the installment plan; or that imprisonment for nonpayment of fine is being looked upon with increasing disfavor.

In the table on page 334 is given the percentage distribution of male and female juvenile delinquents (under eighteen years of age) committed to general penal institutions, according to nature of sentence (1923).

Of males committed to general penal institutions a little over one-half (54.3 per cent) are under sentence of imprisonment only, one-tenth (9.8 per cent) under sentence of imprisonment

¹ The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929.

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO
GENERAL INSTITUTIONS ACCORDING TO NATURE OF SENTENCE

Nature of Sentence	Per Cent Distribution	
	Male	Female
Total	100.0	100.0
Imprisonment only	54.3	41.6
Imprisonment and fine.....	9.8	5.9
Imprisonment for nonpayment of fine.....	33.3	52.5
Unreported	2.5	—

and fine, and one-third (33.3 per cent) imprisoned for nonpayment of fine. Of females, a little over one-half (52.5 per cent) are imprisoned for nonpayment of fine—nearly all in southern States. A little over two-fifths (41.6 per cent) are sentenced to imprisonment only. There are 5.9 per cent who are sentenced to imprisonment and fine. Among the colored (not indicated in table), the proportion for imprisonment for nonpayment of fine (50.7 per cent) is double the proportion among the white (26.0 per cent).

NATURE OF SENTENCE ACCORDING TO GEOGRAPHIC AREAS

In the table on page 335 is given the percentage of commitments according to the nature of sentence, both as to prisons and reformatories and as to jails and workhouses, for the several geographic divisions of the United States (1923).

With respect to prisons and reformatories the prevailing form of penalty is simply imprisonment alone. This applies to 93.2 per cent of prisoners in such institutions. A similar or higher proportion is found for all geographic divisions except the Middle Atlantic, and also except with Federal prisons. In some divisions imprisonment alone is the all but exclusive penalty.

Imprisonment accompanied by fine is the penalty for 6.4 per cent of prisoners. In most divisions the proportion is very small; in the Middle Atlantic division and in Federal prisons it is one-sixth. Imprisonment for nonpayment of fine is very rarely the case in prisons and reformatories (0.2 per cent).

A certain small proportion of prisoners—0.2 per cent—are under sentence of death, and are awaiting execution. The percentage is 0.5 in the Pacific division, 0.4 in the Middle Atlantic and Mountain, 0.3 in the South Atlantic, 0.2 in the East North

PERCENTAGE OF COMMITMENTS TO GENERAL PENAL INSTITUTIONS ACCORDING
TO FORM OF SENTENCE BY GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent of Total						
	Sentenced to—			Im- prison- ed for Non- pay- ment of Fine	Sentenced to—		Im- prison- ed for Non- pay- ment of Fine
	Death	Im- prison- ment Only	Im- prison- ment and Fine		Im- prison- ment Only	Im- prison- ment and Fine	
	Prisons and Reformatories				Jails and Workhouses		
United States	0.2	93.2	6.4	0.2	30.2	15.7	52.9
New England	0.1	93.8	5.0	1.0	55.5	17.4	26.9
Middle Atlantic	0.4	83.1	16.5	—	42.4	9.0	47.9
East North Central....	0.2	92.9	6.2	0.7	15.0	24.1	59.8
West North Central...	0.1	98.9	1.0	—	35.6	12.5	49.9
South Atlantic	0.3	93.9	5.7	—	24.4	10.8	63.5
East South Central....	0.1	99.9	—	—	14.6	38.9	44.7
West South Central...	0.2	97.4	2.4	—	10.3	18.5	69.0
Mountain	0.4	97.1	2.6	—	36.3	13.0	49.3
Pacific	0.5	99.3	0.2	—	44.7	9.5	45.2
Federal prisons	—	84.1	15.9	—			

Central and West South Central, and 0.1 in the New England, West North Central, and East South Central.

With respect to jails and workhouses the proportion for imprisonment alone is a little under one-third (30.2 per cent). This proportion varies considerably among the several divisions. It is in general highest in the New England, Pacific, and Middle Atlantic divisions, and lowest in the southern and the East North Central. Imprisonment together with fine is the penalty for almost one-sixth (15.7 per cent) of such prisoners. In general it is most frequent where imprisonment alone is least frequent. Imprisonment for nonpayment of fine has the largest proportion of all, or a little over one-half (52.9 per cent). For most of the divisions the proportion is not much under one-half or not much over one-half, except in the New England, where it is only a little over one-fourth, in the West South Central, where it is a little over two-thirds, and in the South Atlantic, where it is almost two-thirds. Imprisonment in local institutions for nonpayment of fine is resorted to with greatest frequency in the south, doubtless in large part because of its considerable Negro population.

NATURE OF SENTENCE IN RELATION TO CHARACTER OF OFFENSES

In the table on page 337 is given the percentage of commitments to jails and workhouses according to nature of sentence for different offenses (1923).¹

There are relatively high proportions (above the average) for imprisonment only with respect to violation of drug laws, burglary, robbery, homicide, forgery, rape, nonsupport of family, vagrancy, larceny, offenses against the administration of justice, malicious mischief, assault, and adultery. Proportions are relatively high for both imprisonment and fine in the case of violation of liquor laws, violation of traffic laws, keeping house of ill fame, larceny, rape, carrying concealed weapons, assault, burglary, homicide, adultery, robbery, offenses against the administration of government, prostitution, and forgery. Proportions are relatively high for imprisonment for nonpayment of fine in the case of violation of city ordinances, gambling, disorderly conduct, trespassing, drunkenness, and fraud. For all these offenses, except fraud, the proportions are over seven-tenths.

There appear certain differences among the several forms of sentence according to the offense committed. Imprisonment only seems the more likely in the case of violation of drug laws and offenses against property for gain or attended with violence; both imprisonment and fine in the case of violation of liquor and of traffic laws and some offenses as to sex; and imprisonment for nonpayment of fine in the case of offenses in general against sobriety, good order, and public policy.

Sentences of death are for but two offenses, homicide and rape, mostly the former.

FORMAL LENGTH OF PRISON TERM

The length of time during which the imprisoned offender is to remain in prison is formally and theoretically fixed in the sentence imposed upon him. In the United States, especially when the indeterminate sentence is not involved, the average length for felonies varies greatly, for misdemeanors being in general much less.² Murder may be punished (apart from capital punishment) by life imprisonment or by imprisonment for a certain

¹ Figures as to prisons and reformatories are given in connection with the indeterminate sentence.

² For statistics as to length of sentence for different forms of offenses, see following pages.

PERCENTAGE OF COMMITMENTS TO JAILS AND WORKHOUSES ACCORDING TO
NATURE OF SENTENCE BY OFFENSE

Offense	Per Cent of Total			
	Death	Imprisonment Only	Imprisonment and Fine	Imprisoned for Nonpayment of Fine
Total	—	30.2	15.7	52.9
Against the person	0.2	40.3	25.3	32.1
Assault	—	40.0	26.1	31.9
Homicide	6.1	64.3	21.6	1.9
Other	—	25.1	10.8	63.2
Against property	—	46.7	24.5	26.9
Burglary	—	69.2	22.1	4.7
Forgery	—	63.8	16.2	14.9
Fraud	—	30.6	14.6	53.2
Larceny	—	50.2	29.5	18.9
Robbery	—	67.2	21.3	5.2
Malicious mischief	—	42.2	13.8	42.9
Trespassing	—	18.4	8.6	72.3
Other	—	45.2	32.0	20.8
Against sex morality.....	—	34.8	20.6	42.7
Adultery	—	36.4	21.6	40.7
Prostitution	—	27.9	17.7	52.6
Keeping house of ill fame.....	—	23.7	32.1	43.5
Rape	0.3	63.7	27.7	5.3
Other	—	44.5	19.4	33.2
Against administration of government	—	47.0	21.2	29.5
Against public health and safety....	—	32.8	18.8	47.7
Carrying concealed weapons.....	—	30.6	26.2	42.1
Violation of city ordinances.....	—	11.7	1.4	86.5
Violation of drug laws.....	—	84.7	7.5	6.8
Violation of traffic laws.....	—	30.2	34.7	34.3
Other	—	30.0	32.9	36.7
Against sobriety, good order, and public policy	—	25.5	12.9	60.8
Disorderly conduct	—	20.9	4.2	74.4
Drunkenness	—	21.7	6.9	70.9
Gambling	—	8.6	15.4	74.7
Vagrancy	—	54.5	7.7	37.1
Violation of liquor laws	—	21.0	43.9	33.0
Other	—	30.9	12.5	55.4
Against children and prisoner's family	—	52.9	23.2	20.6
Nonsupport or neglect.....	—	62.4	16.6	17.0
Other offenses	—	28.8	39.9	29.8
Unclassified and unknown	—	37.1	16.7	42.1

number of years. Voluntary manslaughter or murder in the second degree may have punishment with a somewhat shorter sentence. Involuntary manslaughter is subject to a still shorter sentence, the minimum period often being one or a few years.

Assault with intent to kill may incur a rather more severe sentence than involuntary manslaughter.

Such offenses as arson and burglary are punishable by imprisonment all the way from a few years to a life term. Robbery may receive a more or a less severe penalty, though on the whole it has a sentence commensurate with that of homicide or rape. Larceny generally has lesser penalty—though when firearms are employed, or force is used, or there is danger to life, or the home is invaded, the penalty may become greater. Such offenses as forgery, perjury, or bigamy generally have an upper limit of ten years, though occasionally the limit is higher. And so through the entire gamut of crime.

Less serious offenses, punishable as a rule in local institutions (such as jails), may have sentences of a few months, or a few weeks, or even a few days.

In general one guilty a second time of the same offense is given a more severe penalty. In certain States a person guilty of a fourth (possibly a fifth) serious crime is given a life sentence, under an "habitual offender" law—a matter later to receive attention.

Sometimes cumulative sentences, or one sentence after another, are possible. A person guilty upon several counts, or guilty of several offenses, especially if committed at the same time or in the same general action, may have added together the penalties for each separate one, as the total penalty to be received. Sentences may thus be of consecutive order. Sometimes, on the other hand, different sentences imposed at one time may as far as possible cover the same period of time; or they may be said to run concurrently.

The number of years of imprisonment for different offenses varies widely in the different States. In one State a given crime may be punished from two to five times as severely as in another State; and *vice versa* as to another crime. The limitations between which a particular sentence may be imposed differ hardly less widely among the several States.

The actual time served in prison is a quite different matter from the term of the formal sentence imposed. The two are very often by no means equal, or even near together. The difference between them is in fact becoming greater with the course of time. The present trend is toward greater flexibility in the prison term, and away from fixed or hard and fast rules. Special means have been called into requisition to reduce the sentence, or to keep the prisoner from serving out his full time. The basic

means is a sentence without definite fixation of its length, but rather left indeterminate. With it may be combined a system of release under surveillance for a time, or on parole. In addition there may be certain regulations as to good conduct in prison, which serve to reduce the actual term of imprisonment. These several matters are considered later.

LENGTH OF SENTENCE IN STATE PENAL INSTITUTIONS

For the United States as a whole the average minimum length of sentence to prisons and reformatories (1926) is for males 2.37 years, and the average maximum length 7.73 years. The ratio of average minimum sentence to average maximum—the proportion which the former constitutes of the latter—is 30.7 per cent; that is, the minimum sentence is as a rule about three-tenths of the maximum. With females the difference between the two forms of sentence is much greater. The average minimum length of sentence is 0.63 years, and the average maximum 4.64 years, while the ratio between the two is 13.6 per cent, or about one-eighth.¹

In the table on page 340 is given, by different States in order (so far as possible), the average length of maximum sentence (in years) for male and female admissions to prisons and reformatories (1926).²

Wide variations are to be noted, even between contiguous States, and having like economic and social conditions. In most cases, though not in all, the average is lower for females than for males. Much of the difference between States depends, apart from the size of the penalty imposed in the law, or by the courts, upon the nature of the offenses committed in the several States, upon the extent of the use of the indeterminate sentence, and upon the extent to which offenders are placed in State or in local institutions. As local penal institutions apply in general to the less serious offenses, States with relatively small proportions in State institutions are likely to have relatively larger proportions of those charged with the more serious offenses, and consequently longer average sentences.

In the first table on page 341 is given the percentage distribution of admissions, and of male and female separately, to prisons

¹ If sentences without fixed minimum are not included, the average length of the minimum sentence for males is 2.7 years, and for females 1.7.

² For further tables as to length of sentence, see tables in chapter on Indeterminate Sentence. See especially pp. 356, 358.

AVERAGE NUMBER OF YEARS OF MAXIMUM SENTENCE OF ADMISSIONS TO
PRISONS AND REFORMATORIES BY STATES

State	Yrs.	State	Yrs.	State	Yrs.
MALE					
California	18.61	Minnesota	7.78	Kentucky	4.66
Illinois	16.66	Mississippi	7.65	Nebraska	4.64
Ohio	16.16	Louisiana	7.23	West Virginia ...	4.61
Utah	14.85	Montana	7.12	Maine	4.57
Indiana	12.67	North Carolina..	6.31	Oklahoma	4.16
Nevada	11.31	Massachusetts ..	6.27	Connecticut	4.05
Kansas	10.04	Wyoming	6.24	North Dakota ...	4.03
Washington	9.69	New Hampshire ..	6.11	Oregon	3.86
Michigan	8.67	Arizona	5.77	Tennessee	3.83
Pennsylvania	8.65	Rhode Island ...	5.57	Arkansas	3.21
Iowa	8.63	Wisconsin	5.01	Vermont	3.14
New Jersey	8.27	Missouri	4.83	South Dakota ...	3.03
New York	8.05	South Carolina..	4.74	Maryland	1.83
Colorado	7.81	Virginia	4.72		
FEMALE					
Illinois	20.88	Iowa	4.65	Arkansas	3.33
California	16.88	Pennsylvania ...	4.56	Connecticut	3.29
Ohio	11.45	North Carolina..	3.89	Colorado	2.86
Mississippi	10.74	Kentucky	3.68	Kansas	2.78
Washington	10.37	New York	3.59	Oklahoma	2.69
Indiana	10.22	Maine	3.55	Rhode Island ...	2.69
West Virginia ...	8.47	Missouri	3.47	South Carolina ..	2.38
Louisiana	7.34	Wisconsin	3.43	Vermont	1.81
Minnesota	6.78	New Jersey	3.42	Maryland	1.78
Virginia	4.67	Massachusetts ..	3.34		

and reformatories, according to maximum length of sentence (1926).

Well over one-half (56.1 per cent) of sentences are for the periods from 1 to 3.99 years and from 5 to 5.99 years. Under four years are 45.8 per cent. With sentences of five years and over are 46.9 per cent, of ten years and over 27.0 per cent, and of twenty years and over 7.8 per cent. There are 3.1 per cent with life sentences. Sentences of males are much longer than of females. Having sentences under four years are 61.1 per cent of females, and 45.0 per cent of males. Having sentences of ten years and over are 9.6 per cent of females, and 28.1 per cent of males. In addition, 16.4 per cent of females have the maximum sentence not fixed.

In the second table on page 341 is given for the several offenses both the average minimum length of sentence and the average

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
BY MAXIMUM LENGTH OF SENTENCE

Maximum Length of Sentence	Per Cent Distribution		
	Total	Male	Female
Total.....	100.0	100.0	100.0
Under 1 year	3.7	3.4	8.5
1 to 1.99 years.....	18.1	18.4	13.4
2 to 2.99 years.....	13.9	14.2	9.8
3 to 3.99 years.....	10.1	9.0	29.4
4 to 4.99 years.....	2.8	2.9	1.3
5 to 5.99 years.....	14.0	14.4	7.0
6 to 9.99 years.....	5.9	6.0	3.0
10 to 10.99 years.....	9.4	9.7	4.0
11 to 19.99 years.....	9.8	10.2	2.8
20 years and over.....	7.8	8.2	2.8
Maximum not fixed.....	1.0	0.1	16.4
Minority	0.2	0.2	0.1
Life	3.1	3.2	1.4
Term not reported.....	—	—	0.1

AVERAGE MINIMUM AND MAXIMUM LENGTH OF SENTENCE OF ADMISSIONS
TO PRISONS AND REFORMATORIES BY OFFENSE

Offense	Average Maximum Sentence (Years)		Average Minimum Sentence (Years)		Per Cent of Average Maximum Sentence by Average Minimum Sentence	
	Male	Fe- male	Male	Fe- male	Male	Fe- male
Total.....	7.73	4.64	2.37	0.63	30.7	13.6
Homicide	21.22	15.64	6.57	4.73	30.9	30.2
Rape	12.14	—	3.33	—	27.4	—
Robbery	16.93	12.88	6.06	—	35.9	—
Assault	5.96	4.29	2.40	1.00	40.3	23.3
Burglary	8.37	7.75	1.94	1.48	23.3	18.0
Forgery	7.31	7.96	1.41	0.95	19.3	11.9
Embezzlement	5.59	—	1.69	—	30.2	—
Fraud	4.48	—	1.17	—	26.1	—
Possession of stolen property....	3.25	2.22	1.08	—	33.2	—
Larceny	5.53	3.85	1.35	0.73	24.4	19.0
Sex offenses, except rape	6.41	2.99	2.21	0.30	34.5	10.0
Violation of liquor laws.....	1.70	1.18	0.89	0.45	52.8	38.1
Violation of drug laws	2.58	2.34	0.65	—	25.2	—
Carrying weapons	3.31	—	1.32	—	40.0	—
Nonsupport or neglect of family.	2.31	2.05	0.92	—	40.0	—
Other	5.09	2.68	1.50	0.09	29.4	33.5
Not reported	3.69	—	1.48	—	40.0	—

maximum length of sentence for male and female admissions to prisons and reformatories, together with the ratio of the one to the other (1926).

With males, the longest average maximum sentences are in the case of homicide, robbery, rape, burglary, forgery, and assault; the longest average minimum sentences are in the case of homicide, robbery, rape, assault, burglary, and embezzlement. (Relatively few of the less serious offenses have to do with prisons and reformatories; if jails and workhouses were included, the figures for such offenses, as to both forms of sentence, would be lower.) Among different offenses the ratio of minimum sentence to maximum (the proportion which the former constitutes of the latter) ranges from one-half to one-fifth. The order for the several offenses is as follows: violation of liquor laws, assault, carrying weapons, nonsupport, robbery, sex offenses (not rape), possession of stolen property, homicide, embezzlement, rape, fraud, violation of drug laws, larceny, burglary, and forgery. The ratio is lower with offenses against property. With females the ratio ranges from about two-fifths to one-tenth. The order for the several offenses (so far as recorded) is as follows: violation of liquor laws, homicide, assault, larceny, burglary, forgery, and sex offenses.

In the following table is given the average length of minimum sentence according to the several offenses for both first offenders

AVERAGE LENGTH OF MINIMUM SENTENCE FOR RECIDIVISTS ADMITTED TO PRISONS AND REFORMATORIES

Offense	First Offenders (Years)	Recidivists (Years)
Total	2.27	2.44
Homicide	5.96	6.95
Rape	3.22	3.54
Robbery	5.85	6.44
Assault	2.05	2.62
Burglary	1.72	2.12
Forgery	1.17	1.64
Embezzlement	1.67	1.81
Fraud	1.04	1.14
Possession of stolen property	0.95	1.24
Larceny	1.25	1.40
Sex offenses, except rape	2.09	2.35
Violation of liquor laws	0.89	0.92
Violation of drug laws	0.63	0.62
Carrying weapons	1.05	1.58
Nonsupport or neglect of family	1.02	0.91
Other	1.55	1.45
Not reported	1.26	1.93

and recidivists among males admitted to prisons and reformatories (1926).

The average length of minimum sentence with males is 2.44 years for recidivists, and 2.27 years for first offenders. (In the case of violation of drug laws and nonsupport of family it is greater for first offenders.) With females the average length of minimum sentence is 0.33 year for recidivists, and 0.50 year for first offenders.

The average length of maximum sentence is with males 8.20 years for recidivists, and 8.56 years for first offenders. With females the respective numbers are 3.59 and 4.49. Courts in sentencing offenders are often unaware of previous terms of imprisonment. Probably also there is little settled policy on their part in the imposition of sentences upon recidivists.

LENGTH OF SENTENCE IN LOCAL PENAL INSTITUTIONS

In the table on page 344 is given the percentage distribution of commitments to jails and workhouses, and of males and females separately, according to length of sentence (1923).

Of all commitments to jails and workhouses, two-thirds (66.0 per cent) have sentences of thirty days or less. One-fifth (20.0 per cent) have sentences of thirty days, and a little under one-half (46.0 per cent) have less than thirty days. One-sixth (16.5 per cent) have sentences under ten days. Only 4.3 per cent have sentences of one year or more. Except as to sentences of six months or over, females have somewhat shorter sentences than have males.

In the table on page 345 is given the percentage distribution of commitments to jails and workhouses by length of sentence, according to whether sentence is to imprisonment only, whether sentence is to imprisonment and fine, or whether there is imprisonment for nonpayment of fine (1923).

Of those sentenced to imprisonment only, somewhat over one-half (55.2 per cent) have sentences of one month or less, one-fourth (25.1 per cent) have sentences of one month, three-tenths (30.1 per cent) have sentences of less than one month, and a little over one-tenth (11.5 per cent) of less than ten days. Only 7.4 per cent have sentences of one year or more.

The proportions are much similar for those having both imprisonment and fine. Three-fifths (60.4 per cent) have sentences of one month or less. About one-third (32.8 per cent) have sentences of one month. A little over one-fourth (27.6 per cent) have

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO JAILS AND WORKHOUSES
BY LENGTH OF SENTENCE

Length of Sentence	Per Cent Distribution		
	Total	Male	Female
Total.....	100.0	100.0	100.0
1 year or over.....	4.3	4.3	3.9
9 to 11 months.....	0.8	0.8	0.8
6 to 8 months.....	5.5	5.5	5.4
7 to 8 months.....	0.5	0.5	0.4
6 months	5.0	5.0	5.0
3 to 5 months.....	9.7	9.4	12.2
5 months	1.0	1.0	0.9
4 months	1.7	1.7	2.1
3 months	7.0	6.8	9.2
2 months (60 to 89 days).....	7.6	7.5	9.4
61 to 89 days.....	1.7	1.6	2.8
60 days	5.9	5.9	6.6
1 month (30 to 59 days).....	25.2	24.7	30.9
31 to 59 days.....	5.2	5.2	5.0
30 days	20.0	19.5	25.9
20 to 29 days.....	8.1	8.0	8.8
26 to 29 days.....	0.9	0.8	1.8
25 days	1.2	1.2	1.2
21 to 24 days.....	2.2	2.1	3.3
20 days	3.7	3.8	2.5
10 to 19 days.....	21.4	21.8	17.6
16 to 19 days.....	1.0	1.0	1.0
15 days	4.5	4.6	3.2
11 to 14 days.....	3.0	3.0	3.8
10 days	12.9	13.2	9.5
Less than 10 days.....	16.5	17.0	10.2
6 to 9 days.....	2.0	2.0	2.4
5 days	6.0	6.1	4.1
4 days	0.5	0.6	0.3
3 days	3.5	3.7	1.2
2 days	2.6	2.7	0.8
1 day	1.8	1.9	1.3
Indeterminate	1.0	1.0	0.7

sentences of less than one month; and practically one-tenth (10.5 per cent), of less than ten days. Only 5.8 per cent have sentences of one year or more.

The length of sentence tends to be much shorter in the case of imprisonment for nonpayment of fine. Here considerably over four-fifths (86.7 per cent) of commitments have sentences of one month or less. Almost two-thirds (63.5 per cent) have sentences of less than one month. Over one-fifth (22.1 per cent) have sentences of less than ten days. Possibly reduced sentences here are inspired in some measure by the financial condition of the offender.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO JAILS AND WORKHOUSES
ACCORDING TO LENGTH OF SENTENCE BY NATURE OF SENTENCE

Length of Sentence	Per Cent Distribution		
	Sentenced to—		Imprisoned for Non- payment of Fine
	Imprison- ment Only	Imprison- ment and Fine	
Total.....	100.0	100.0	100.0
1 year or over.....	7.4	5.8	1.7
1 to 11 months.....	62.4	66.6	34.8
9 to 11 months.....	1.2	1.4	0.4
6 to 8 months.....	9.4	8.6	1.9
3 to 5 months.....	16.3	12.2	4.7
2 months	10.3	11.7	4.6
1 month	25.1	32.8	23.2
Less than 1 month.....	30.1	27.6	63.5
20 to 29 days.....	2.9	3.6	13.1
10 to 19 days.....	15.8	13.5	28.3
Less than 10 days.....	11.5	10.5	22.1

CHAPTER XLI

MEANS OF REDUCTION OF PRISON TERM

IN GENERAL

The several ways by which the term of a prison sentence may be reduced, or the release of a prisoner from prison accelerated before the appointed time of discharge, are: commutation of sentence on the part of the Governor, operation of "good time" regulations, and operation of provisions of the indeterminate sentence. The latter two of these factors may be in conjunction, or have cumulative play. A prisoner may be eligible to a reduced sentence only after he has observed "good time" for a specified period; or he may benefit by the lower limits of an indeterminate sentence only when "good time" requirements have been complied with. The operation of parole also has the effect of cutting short a prison sentence, though it constitutes really a means of release from prison.

COMMUTATION

Power as to commutation of sentences of prisoners is as a rule vested in the hands of the Chief Executive of the State, to meet an emergency or to secure justice, when no other recourse is at hand. In this respect it is very much on the order of pardon. For the most part, however, it applies only to the changing of a sentence of capital punishment to imprisonment for a greater or less time, in particular for life. For other forms of sentence it is now being sparingly employed, being in fact but seldom called for in view of other and more desirable prison policies. Occasionally it is availed of as a reward for exceptionally meritorious behavior. (This form of "commutation" is to be distinguished from that under "good time" regulations.)

"GOOD TIME" REGULATIONS

"Good time" regulations, whether or not called by this name, have existed sporadically in the United States from early in the

nineteenth century, being rather a gradual growth in the process of the development of prisons. They have had considerable introduction only after the Civil War, in a large measure coterminously with the indeterminate sentence.

"Good time" regulations are sometimes known as "commutation," "compensation," etc. Though they may require legislative authorization, they are much less related to judicial proceedings than the indeterminate sentence. With due sanction, they are to a large extent put into force by the prison authorities as a matter of discipline and good order, with regard also for the general improvement of the prisoner. They constitute a material reward for good behavior while in prison. They are intended to make the prisoner consciously strive to bear himself well, so as to expedite his release. They are designed for prisoners amenable to reformative influences, especially first offenders.

"Good time" regulations are often based upon a system of grades or of merits and demerits. Merits come mainly from observance of prison rules and diligence in prison labor. Release under them, when it comes, is for the most part unconditional and complete. Possibly they may not be allowed till a certain portion of the prisoner's sentence has been served. In some instances parole provisions have application.

By means of these regulations a prisoner's time is reduced so many days a month, or so many months a year, the total reduction being taken from the total time of the sentence imposed. Usually the reduction is on a graduated scale or of progressive character, being greater for the second unit of reckoning (whether a month, a year, or other period) than for the first, greater for the third than for the second, and so on. From five to fifteen days may be taken off in one month, or from two to five months in one year. Time may eventually be reduced to one-third, or even one-half, or even more, of full time. Much depends upon the length of sentence, longer sentences being subject to the greater reduction. The rate of reduction varies in different States.

Though "good time" regulations are, in theory at least, independent of the form of sentence, they may in fact have direct relation to both the indeterminate and the definite sentence. They may likewise apply to the minimum sentence no less than to the maximum.

With the indeterminate sentence the regulations may have the double effect of showing in some degree a prisoner's suitability for discharge and of accelerating his departure. To a certain extent, however, "good time" regulations are inconsistent with

the principles of the indeterminate sentence. While always useful for purposes of discipline, they may be devoid of some of the other essentials for proving fitness for release from prison. It is not very difficult for a prisoner, unworthy of freedom in other respects, to assume a good prison record for a greater or less length of time, especially when there is a tangible reward in prospect for it. But when good time regulations are properly ordered, they may serve a desirable end in promoting fitness for discharge.

Upon the definite sentence good time regulations have a more pronounced effect. They occasion a distinct modification in this form of sentence, causing it in reality to be a form of the indeterminate sentence. When there is a deduction from the prisoner's time in prison in consequence of given conduct, the result is that an ostensibly definite sentence turns out to be an indeterminate one. In such case the formal definite sentence becomes simply the maximum sentence.

INDETERMINATE SENTENCE

The matter of the indeterminate sentence is of such importance as to require consideration all to itself.

CHAPTER XLII

INDETERMINATE SENTENCE

THEORY OF INDETERMINATE SENTENCE

The matter of the indeterminate sentence in the United States has been a developing one. Up to comparatively recent years the prevailing form of sentence for prisoners was the definite or fixed sentence. In a large degree it expressed the old idea of retribution. For a given offense the convicted person had to serve a given time, no more and no less, barring of course extension of Executive clemency. The length of the sentence was somehow exactly to be measured by the offense, or was somehow to "fit" it—though in fact there was little attempt at scientific determination of the connection between the extent of the sentence and the seriousness of the offense. So far as the issue was left for judicial fixation, there might be little uniformity in the sentences imposed, it being possible for different periods to be set by different judges. Among many judges the actual prison term prescribed has often proved to be according to a rule of thumb, on no scientific basis—often simply a multiple of five years. Sometimes, also, if a sentence appeared too severe for a particular offense, a jury or court might refuse to impose such. With the definite sentence, furthermore, prisoners could be discharged from prison at the time set in the pronouncement of judgment, no matter what was their condition or their fitness for release. The prison was not permitted to keep beyond this time any who were not suited to be free, though freedom might be bad alike for them and for the community.

Under modern conceptions, there is under way a movement toward an indeterminate or unfixed sentence, based in a greater or less degree upon the general suitability of the prisoner's discharge, and without any return to judicial or other official arbitrariness.¹ The indeterminate sentence was for the most part

¹The fixed sentence had itself originally constituted a step forward in criminal procedure, being as it was a reaction to the possible oppression and arbitrary action on the part of judges when they were allowed to keep offenders in prison as long as they pleased.

adopted in the United States toward the last years of the nineteenth century, New York in 1876 being the first State really to introduce it.¹ It is now found in all but a few States. It is general for reformatories, for juveniles and adults alike, and is being employed on an ever enlarging scale in prisons. It has usually gone hand in hand with parole.

The indeterminate sentence has been challenged as in possible violation of the Federal and State Constitutions. It has been called in question on the ground that it vests a judicial power in a non-judicial body; that it involves a sort of pardoning power, which can be exercised only by the Governor; that proceedings are in the absence of a jury trial; and that cruel or inhuman punishment might be a result. The laws upon the subject have in general stood.

PRINCIPLES OF INDETERMINATE SENTENCE

The actual time to be served under the indeterminate sentence depends upon the conduct of the prisoner while in prison, and upon his general fitness to be discharged. It implies commitment to influences which can develop and help the prisoner physically, mentally, and morally. Under it his better sensibilities are evoked and directed. His own self-interest is appealed to. There is afforded a constant incentive to good conduct. Different reformatory influences can be resorted to—progress in learning a trade or in schooling, general improvement, recognition of social responsibilities, etc. In fact, the whole procedure can be made of an educational nature.

The indeterminate sentence, as a peculiar feature, permits some degree of individualization of punishment. It allows special diagnosis and special treatment according to individual needs. Through it the offender may be looked upon, not as a type, but as an individual personality. From the point of view of the prison, there is afforded the prisoner a form of treatment analogous to that afforded a sick person in a hospital. As it is irrational in the latter case to set a time for the release of a patient, so it should be no less irrational to discharge from prison a

¹ In Michigan a little before a maximum imprisonment for women found guilty of disorderly conduct was fixed at three years. This law was declared unconstitutional. In the founding of juvenile reformatories, or houses of refuge, at about the end of the first quarter of the nineteenth century, a sort of indeterminate sentence was put into use in connection with discharge.

person till such time as it is safe to do so. In the indeterminate sentence there is not delivered a judgment offhand, but there is provided a species of holding in which are combined due incarceration and a process of study and observation of diagnostic character, with whatever therapeutic measures are possible.

The arrangement obviates in some measure the evils both of an unduly short sentence and of an unduly long one. With the short sentence few reformatory impressions are possible, while frequent terms of this kind may create rounders. On the other hand, unduly long sentences may tend to have a depressing or a hardening influence, or to make one more desperate, a circumstance which may militate against reformation. Long terms in prison, besides adding to the problem of discipline, necessitate increased prison space.

In the indeterminate sentence there is an advantage of special and tremendous value from the standpoint of the interests and safety of society in that it permits the keeping as long as may be necessary of an offender who shows little improvement while in prison and whose discharge might result in further harm to the community. Through it there is simply being carried out a policy designed for the protection of society, which has rights no less than the offender—rights in fact prior and paramount to his rights. For its good it may even provide custodial treatment of the offender for life, or what amounts to permanent quarantine.

It is to be remembered at the same time that sooner or later, or in the course of time, practically all prisoners (with the qualifications already indicated) are to be returned to the community. With respect to a large proportion of them there cannot be felt any considerable degree of security unless some change has been effected in their character before release. Some reformation on their part is the fullest assurance of safety to the public. So far as this is possible with the offender, it is to be achieved largely through the indeterminate sentence.

Finally, the indeterminate sentence proves a means of saving much expense to the state. By the discharge at a relatively early date of prisoners who are believed to be reformed and in no further need of custody, the cost of their care and maintenance is eliminated. Accommodations are incidentally made available for newcomers to prison, who possibly otherwise might require the creation of additional quarters. Overcrowding is reduced in corresponding measure.

The indeterminate sentence is best adapted for first offenders

or for occasional offenders, and should apply largely to them. How far it is to be extended to prisoners of different sorts and conditions, is rather a matter for individual determination.

The indeterminate sentence should on one side be linked up with the grading system of the prison, and on the other side with the parole system. The prisoner must give some evidence while in prison of his fitness for discharge, and after discharge must afford continued proof of this fitness.

To make the indeterminate sentence of greatest effectiveness, there should be some sort of understanding or joint action between the sentencing court and the prison administration, together with possible special parole authorities. The sentencing court might at least be referred to for consultation and advice. The prison authorities should always have much to say in the matter, being close to the situation and in exceptional position to know what is best to be done. Direct decisions as to the fitness of a given prisoner for release should perhaps be in the hands of a body of experts, including mental experts. This body might go even further, and in considerable measure relieve the sentencing court of its power to fix sentence. By observation and examination and by social studies it could pass upon the type and nature of the offender, and upon the kind of treatment in general to be accorded him—the character of the institution to which he is to be committed, the manner of life he is to have there, the possible length of his stay (including the possibility of long or permanent custody), the likelihood or desirability of subsequent parole, etc. Largely for practical purposes the regular parole authorities might have charge of the matter.

POSSIBLE FORMS OF INDETERMINATE SENTENCE

With the true indeterminate sentence there are set to the term of imprisonment no limits, maximum or minimum. No specified period is fixed for the prisoner's stay in prison, this being as long or as short as may on the whole be best. The actual term is to be determined by the proper authorities. This form of treatment becomes of added effectiveness when it does not give released prisoners full discharge, but only parole, they remaining subject to prison control, and to be returned to prison in case parole provisions are violated.

So far may extend the conception of prison treatment rather than mere incarceration, that a limit of one kind may even appear desirable. This is a lower or minimum limit, prisoners

being required to remain in prison for a certain time, so as to permit opportunity for proper attention to them, and for suitable reformatory influences to play upon them. How long the period should be, whether part of a year or several years, is to depend upon the individual needs of prisoners.

With juvenile delinquents in particular, institutional confinement should be of sufficient length to be of real benefit. In general little can be expected of good in less than one or two years. If their stay is too brief, there is not permitted the adequate operation of educational and reformatory forces. The period may well be indeterminate during minority, the exact time of release being dependent upon the child's improvement. If necessary, on the attainment of majority, certain unimproved cases might be transferred to regular penal institutions for adults.

In present procedure, however, the indeterminate sentence does not necessarily mean a sentence without any limits at all. As generally understood, it may be said to denote the fixing of a given sentence between a certain lower and a certain upper limit. There is thus mainly involved a minimum period of imprisonment before the expiration of which a prisoner cannot be released, and a certain boundary beyond which he cannot be kept. There are, however, variations in the procedure in the different States; in fact, there may be said to be several kinds of indeterminate sentence. (1) There may be both a maximum and a minimum limit set by law between which sentence may be imposed at the discretion of the court, or possibly by the jury—or, as an important deviation from this arrangement, both the maximum and the minimum limits may be expressed in the sentence, with the actual time to be served decided later by the proper authorities. (2) There may be a maximum limit but no minimum, the maximum being imposed at the time of sentence, and the prisoner being subject to discharge at any time before this in the judgment of the proper authorities. (3) Imprisonment may continue only during minority, an arrangement with respect to juvenile delinquency, and in fact merely a sentence with a maximum limit. (4) There may be a minimum limit, but no maximum, the time beyond the minimum being left to the proper authorities. (5) There may be neither a maximum nor a minimum limit set, in which case there is a genuine indeterminate sentence. It is to be added that there may possibly be a limit to "life" sentences, or a time when a prisoner serving such a sentence may be released. Under special circumstances the definite sentence becomes in practice a form

of the indeterminate sentence—or when it is subject to reduction on account of “good time” regulations, commutation, etc.

The system of indeterminate sentence having the most frequent use in the United States is the sentence with both a maximum and a minimum limit. The system possibly next in extent, but on the whole with relatively small representation, is that with a maximum limit, but with no minimum. Following it is the sentence with a minimum limit, but with no maximum. When both maximum and minimum limits are specified, the minimum may be a certain proportionate part of the maximum, often one-third or one-fourth. There are considerable variations and modifications in the forms of the indeterminate sentence in the different States. There is a distinct tendency towards greater flexibility with respect to the limits to be affixed for the indeterminate sentence, or towards the abolishment of limits altogether—in other words, an approach to the true and unmodified indeterminate sentence. Control in the matter is in process in greater or less measure of passing from the committing court to the specially designated authorities—though as yet the genuine indeterminate sentence can hardly be said to exist in the United States.

“HABITUAL OFFENDER” LAWS IN CONNECTION WITH INDETERMINATE SENTENCE

Somewhat in connection with the matter of the indeterminate sentence there has arisen a certain new policy in the law—though in fact largely a new kind of determinate or definite sentence. This is the sentencing for life of persons convicted of several offenses in succession, especially offenses of the more serious sort. The theory involved is that the recurrence of criminal acts is sufficient proof that reform with such offenders is not to be expected, that they may not be trusted anew, and that their release would simply mean a further and continued menace to society.

Laws permitting this form of treatment of the offender are sometimes denominated “habitual offender” laws. They have reference for the most part to felonies. The number of convictions to cause their operation is generally four or five. After the first offense successively longer sentences are imposed, till finally the ultimate sentence—the life term—is reached. The law may be mandatory upon the judge hearing the case, he being allowed no discretion in the matter. (In some States life imprisonment in

general is imposed only when the offender is regarded as a habitual one.) Parole may not be possible with such law.

Habitual offender laws were first introduced within the last quarter of the nineteenth century. Within recent years, as the result of a credited outbreak of violent crimes, they have received considerable attention, and are being adopted by a number of States. At the same time they are meeting no little opposition.

It may be that the laws will have a deterrent effect upon would-be offenders, though it is also possible that some may become more desperate in consequence in their operations. If the laws become an established part of criminal procedure, offenders under them will constitute the saddest of all those behind prison bars—and the most hardened. Doomed to incarceration for their natural lives, they are presumed to be beyond any reformatory influences, and become dead before their time.

These laws will certainly tend to increase the prison population, and will render more difficult the problem of discipline. They are not of really constructive character, and may ignore the condition of the offender and the circumstances of his offending. The issue concerns, not so much the matter of the sentencing of a man to life imprisonment when the offense concerned might in itself be one generally penalized only by imprisonment for a limited number of years, but rather the circumstance that the sentence may not even be subject to modification at some future time despite satisfactory evidence of the prisoner's improvement or reform. It is upon this point that the plan runs counter to the present conceptions as to the sentencing of prisoners, especially under the indeterminate sentence, which allows imprisonment for life when necessary for the public interests, but is without special regard for the number of offenses committed. Possibly a considerable proportion of those guilty of several offenses in succession are not fitted to be outside prison walls; but if the true principles of the indeterminate sentence are to be followed, the matter should be determined according to the condition of the individual offender, and not according to the nature or the frequency of his offending; and none should be deemed beyond the reach of reformation till this has been duly proved.

When the law is mandatory, allowing no deviation in particular cases, and vesting no discretion in the courts, it will be the more difficult of enforcement. Its very inflexibility will at times defeat its purposes. Prosecuting officials, judges, and juries alike may be averse to its application in given instances; and

if conviction is to be secured at all, it will have to be through some different route.

The principle is sound of progressively increased sentences with each succeeding conviction of an offender, culminating if necessary in a sentence for life—something perhaps advisable at an early stage; but it is equally desirable that the plan be not made a mandatory one.

EXTENT OF USE OF INDETERMINATE SENTENCE

In the following table is given the percentage distribution of prison inmates in and of commitments to general penal institutions, and as to prisons and reformatories and jails and work-houses separately, according to whether a definite or an indeterminate sentence has been imposed (1923).¹

PERCENTAGE DISTRIBUTION OF PRISONERS IN GENERAL PENAL INSTITUTIONS
BY NATURE OF TERM OF SENTENCE

Length of Sentence	Per Cent Distribution					
	Inmates			Commitments		
	Total	Prisons and Re- forma- tories	Jails and Work- houses	Total	Prisons and Re- forma- tories	Jails and Work- houses
Total	100.0	100.0	100.0	100.0	100.0	100.0
Definite term	57.2	47.9	91.5	86.2	44.4	98.2
1 year or more	43.8	47.5	30.1	14.7	42.3	6.7
Less than 1 year	13.4	0.3	61.4	71.5	2.1	91.5
Indeterminate	42.7	52.0	8.5	13.8	55.4	1.8
Minority	0.1	0.2	—	—	0.2	—

Though the indeterminate sentence has come increasingly into use, the proportion of prisoners in general under it is not quite equal to that under the definite sentence. It is larger, however, for prisons and reformatories. As between the two forms, of inmates of all penal institutions, somewhat over one-half (57.2 per cent) have a definite term, and somewhat under one-half (42.7 per cent) an indeterminate. The proportion having a definite sentence of one year or more is 43.8 per cent, and the

¹ The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929—unless otherwise indicated.

proportion having a definite sentence of less than one year 13.4 per cent. Included with the definite sentence is the life sentence, constituting 7.4 per cent.¹ Under sentence of death are 0.1 per cent. Among commitments 86.2 per cent have a definite sentence, this being for 71.5 per cent less than one year. (Life sentences constitute 0.5 per cent.) About one-seventh (13.8 per cent) have an indeterminate sentence.

A little over one-half (52.0 per cent) of the inmates of prisons and reformatories have the indeterminate sentence. Of those having the definite sentence, practically all (47.5 per cent) have a term of one year or more. The proportions are not greatly different in the case of commitments.

Much the larger number of inmates in jails and workhouses have a definite sentence of less than one year, or 61.4 per cent, as against 30.1 per cent having sentences of one year or more. Of commitments 91.5 per cent have sentences of less than one year.

The indeterminate sentence belongs mainly to prisons and reformatories. It has little place in jails and workhouses, with their brief sentences. The proportion of imprisoned offenders under it is over six times as great in the one class of penal institutions as in the other, and of commitments thirty times.²

In the following table is given the percentage distribution of

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO
GENERAL INSTITUTIONS ACCORDING TO PERIOD OF TIME COMMITTED

Time of Commitment	Per Cent Distribution
Total	100.0
Life	0.5
Minority	0.5
Indeterminate	21.3
Definite Term	77.7
Less than one year	55.3
1 year	5.1
2 to 5 years	4.9
5 years and over	1.7
Not reported	10.9

¹ See p. 358.

² The indeterminate sentence is given the more often in case of plea of guilty. With such pleas also these sentences are in general the shorter. In New York State (1925) the percentage of imprisonments under the indeterminate sentence in case of plea of guilty to the offense charged is 31.0; in case of plea to a different offense, 43.0; and in case of plea of not guilty, with subsequent conviction, 33.1. Report of New York State Crime Commission, 1926.

juvenile delinquents according to the nature of the sentence imposed, with the periods of time, under definite sentence, to which they are committed to general penal institutions (1923).

Of juvenile delinquents committed to general penal institutions, over three-fourths (77.7 per cent) have a definite sentence, and a little under one-fourth an indeterminate. There are somewhat over one-half with definite sentences of less than one year, and one-tenth with sentences of from one to five years.

Most juvenile delinquents are committed to special institutions for the period of their minority or for an indeterminate period, the proportion for such being four-fifths (80.4 per cent) among all commitments.¹ A little more than three-fifths (62.3 per cent) are for the period of minority, and almost one-fifth (18.1 per cent) for an indeterminate period. One-fifth (19.6 per cent) are for a definite period. When a definite period is fixed, it is usually only a few years, in most cases not over one year. About three-tenths are for less than one year, about two-fifths for between one and two years, and about three-tenths for two years or more.

INCREASING USE OF INDETERMINATE SENTENCE

In the following table is given the percentage distribution of inmates in general in penal institutions in 1880, 1890, 1904, 1910, and 1923, and of commitments in 1904, 1910, and 1923, according to nature and length of sentence, including imprison-

PERCENTAGE DISTRIBUTION OF PRISONERS IN GENERAL PENAL INSTITUTIONS
BY NATURE OF SENTENCE AT DIFFERENT YEARS

Character of Sentence	Per Cent Distribution							
	Inmates					Commitments		
	1923	1910	1904	1890	1880	1923	1910	1904
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Death	0.1	0.1	0.2	0.2	0.2	0.1	0.1	0.1
Imprisonment for:								
Life	7.4	6.5	6.2	4.2	3.7	0.5	0.4	0.4
Definite term	49.8	71.9	78.5	95.6	96.1	86.5	92.0	93.5
1 year or more.....	36.4	48.2	53.7	67.7	70.2	13.6	10.8	13.8
Less than 1 year ...	13.3	23.7	24.7	27.8	25.9	72.9	81.2	79.8
Indeterminate period.	42.6	21.3	15.2	—	—	12.9	7.6	6.0
Minority	0.1	0.1	—	—	—	—	—	—

¹ See p. 361.

ment for life, and for a definite and an indeterminate term (sentences for nonpayment of fine being omitted).

Since 1880 there has been a steady decrease in the proportion of prisoners having a definite term, whether for less than one year or for a longer period. The proportion as to prison inmates in 1923 is only about half that in 1880. On the other hand, there has been a general increase both for prisoners serving life terms and for those serving an indeterminate period—the proportion for the latter being practically nil before 1904. Life sentences among inmates have virtually doubled since 1880. Since 1904 the proportion of indeterminate sentences among inmates has almost tripled, and among commitments has almost doubled. The proportion of death sentences in 1923 and 1910 is but one-half of what it was in 1880.

The increase in life terms is to a certain extent but a reflection of the reduction in capital punishment, but to a larger extent it is due to the increasing use of the life term for robberies and other grave crimes, including homicide. Very apparent is the trend toward an indeterminate sentence as against a definite one.

The percentage under indeterminate sentence in prisons and reformatories in 1926 was practically the same as in 1923—55.6 as against 55.4. With males it was the same at both years, or 55.0. With females there is a certain increase, or 69.3 as against 64.9.

INDETERMINATE SENTENCE ACCORDING TO GEOGRAPHIC AREAS

In the first table on page 360 is given for the several geographic divisions of the United States the percentage under indeterminate sentence among inmates in prisons and reformatories, with separate figures for each sex (1923).

The proportion of prisoners under indeterminate sentence varies greatly among different divisions. It is generally lowest in the south and on the Pacific coast. It is greatest in the Mountain division, and smallest in the South Atlantic.

The indeterminate sentence in general is made to apply in a considerably larger degree to females than to males, almost two-thirds (63.8 per cent) of the former having it, as against a little over one-half (51.4 per cent) of the latter. This is not true, however, for all divisions.

In the second table on page 360 is given for the several geographic divisions the percentage of commitments under indeter-

PERCENTAGE OF INMATES IN PRISONS AND REFORMATORIES UNDER INDETERMINATE SENTENCE ACCORDING TO GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent of Total		
	Total	Male	Female
United States	51.9	51.4	63.8
New England	77.5	76.5	84.7
Middle Atlantic	80.8	80.3	87.4
East North Central	81.6	81.9	70.6
West North Central	58.7	58.1	71.6
South Atlantic	16.9	17.0	14.0
East South Central	35.9	36.1	31.8
West South Central	23.6	23.3	35.5
Mountain	86.9	87.1	—
Pacific	37.1	36.7	58.7

minate sentence among all commitments to prisons and reformatories, in both 1910 and 1923, with separate figures for each class of institution.

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES UNDER INDETERMINATE SENTENCE BY GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent of Total					
	Prisons and Reformatories		Prisons		Reformatories	
	1923	1910	1923	1910	1923	1910
United States	55.4	36.9	46.8	21.9	81.2	94.5
New England	82.9	91.2	68.9	77.0	93.3	99.9
Middle Atlantic	84.9	75.9	78.8	56.2	94.5	98.2
East North Central	86.4	60.2	81.5	48.0	92.7	85.1
West North Central	62.4	41.0	43.4	22.9	94.2	99.2
South Atlantic	19.4	2.0	19.4	0.9	—	—
East South Central	40.8	3.9	53.5	3.9	1.9	—
West South Central	15.7	0.1	17.2	0.1	6.4	—
Mountain	95.1	50.9	94.3	43.7	100.0	100.0
Pacific	85.7	30.1	83.9	20.7	95.6	100.0

The proportion of commitments under indeterminate sentence to reformatories is, as we should expect, far greater than to prisons—being in fact not far from double, or 81.2 per cent in the one case as against 46.8 per cent in the other. Among the several geographic divisions the ratio between the two varies widely. In the southern divisions the proportions as to reforma-

tories are actually much smaller than as to prisons, in large part because of the limited development of reformatories in this section of the country. In some divisions nearly all—in the Mountain division all—commitments to reformatories are under the indeterminate sentence.

The notable increase in the proportion of commitments under indeterminate sentence from 1910 to 1923—from 36.9 per cent to 55.4 per cent—is reflected for all divisions but the New England. The increase is greatest in the case of the three southern and the Pacific divisions, the proportions in the southern divisions in 1910 being negligible. The general increase as to prisons has been especially great, the proportion in 1923 being more than double the proportion for 1910. With respect to reformatories there has been a certain decrease, one possibly without great significance.

In the following table is given the percentage for the several periods of time to which juvenile delinquents are committed under indeterminate sentence to special institutions for them, for the several geographic divisions of the country (1923).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS
UNDER INDETERMINATE SENTENCE BY GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent of Total		
	For Period of Minority	For Inde- terminate Period	For Definite Term
United States	62.3	18.1	19.6
New England	76.4	8.8	14.8
Middle Atlantic	62.9	19.4	17.7
East North Central	38.6	24.3	37.0
West North Central	54.7	23.1	22.2
South Atlantic	61.7	23.7	14.6
East South Central	84.3	2.6	13.1
West South Central	52.3	31.8	15.8
Mountain	87.4	1.4	11.2
Pacific	98.4	1.5	0.1

In no geographic division is the proportion of juvenile delinquents committed for the period of minority or for an indeterminate period less than three-fifths; in most it is over four-fifths—in one (Pacific) being virtually 100 per cent. The proportion is lowest in the North Central divisions. The proportion committed for the period of minority ranges from practically two-fifths to almost all.

INDETERMINATE SENTENCE IN RELATION TO CHARACTER OF OFFENSES

In the following table is given for the leading offenses the percentage of commitments to prisons and reformatories under indeterminate sentence (the indeterminate sentence including persons sentenced during minority), and to each class of institution (1923).

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES UNDER INDETERMINATE SENTENCE BY OFFENSE

Offense	Per Cent of Total		
	Prisons and Reforma- tories	Prisons	Reforma- tories
Total	55.4	46.8	81.2
Against the person.....	47.5	46.6	55.2
Assault	62.0	59.8	75.5
Homicide	39.2	39.6	33.6
Other	—	—	—
Against property	63.1	54.9	82.6
Burglary	64.9	56.9	82.0
Embezzlement	55.6	53.5	—
Forgery	61.0	54.8	78.5
Fraud	38.3	34.1	—
Possession of stolen property....	45.8	36.4	—
Larceny	64.4	53.9	84.1
Robbery	70.8	64.5	88.5
Other	51.9	46.0	—
Against sex morality.....	61.9	52.8	81.4
Rape	62.3	57.1	80.5
Other	61.5	47.8	81.9
Against administration of govern- ment	43.2	39.9	—
Against public health and safety...	19.1	15.2	63.1
Violation of drug laws.....	12.1	10.6	—
Other	66.3	56.9	—
Against sobriety, good order, and public policy	44.0	31.4	93.3
Violation of liquor laws.....	38.7	30.1	93.1
Other	77.9	—	93.4
Against children and prisoner's family	70.7	57.8	—
Unclassified and unknown.....	42.8	18.7	86.5

The indeterminate sentence is found relatively frequently (above the average) for general offenses against sobriety, good order, and public policy (except violation of liquor laws), robbery, offenses against children or prisoner's family, general of-

fenses against public health and safety (except violation of drug laws), burglary, larceny, rape, assault, general sex offenses, forgery, and embezzlement.

On the whole, the indeterminate sentence seems to be applied the more often with respect to the more serious or the more violent offenses against property (except fraud and possession of stolen property), offenses against the person (except homicide), offenses as to sex, and offenses against children and one's family. Some States forbid the application of the indeterminate sentence to certain offenses, especially homicide.

The relatively high proportion for persons charged with offenses against property for gain is probably for the reason that such persons become habitual or professional criminals, and for them the indeterminate sentence is considered the better policy. The factor of age has doubtless some part in the matter. The proportion of prisoners under indeterminate sentences is small for violation of liquor and drug laws, largely for the reason that such offenses are under Federal control, and there are no indeterminate sentences under Federal laws (1923).

The proportion under indeterminate sentence is higher in the case of reformatories than in the case of prisons for all offenses except homicide. The difference between the two is most marked with respect to violation of liquor laws and offenses against health and safety. The proportion under indeterminate sentence is higher with females than with males for all offenses except larceny.

In New York State (1925) felonies for which the indeterminate sentence is allowed are, in order, as follows (total, 19.2 per cent): burglary, 25.7 per cent; fraud and forgery, 23.8 per cent; grand larceny, 22.3 per cent; robbery, 18.7 per cent; sex offenses, 17.5 per cent; assault, 12.7 per cent; miscellaneous offenses, 9.8 per cent; manslaughter, 6.5 per cent; carrying concealed weapons, 2.6 per cent.¹

LENGTH OF SENTENCE UNDER INDETERMINATE SENTENCE

In the table on page 364 is given the percentage distribution of inmates in prisons and reformatories, and of commitments thereto, and of males and females separately, according to minimum length of sentence under the indeterminate sentence (1923).

The minimum length of sentence under the indeterminate sentence is relatively short. Of this kind of sentence a little over

¹ Report of New York State Crime Commission, 1926.

PERCENTAGE DISTRIBUTION OF PRISONERS IN PRISONS AND REFORMATORIES
BY LENGTH OF SENTENCE UNDER INDETERMINATE SENTENCE

Minimum Length of Sentence	Per Cent Distribution			
	Inmates	Commitments		
		Total	Male	Female
Total.....	100.0	100.0	100.0	100.0
10 years or over.....	11.7	5.9	6.2	2.1
6 to 9 years.....	6.4	3.5	3.8	0.5
5 years	9.1	5.1	5.4	1.3
4 years	3.5	2.1	2.2	0.4
3 years	9.2	6.7	7.1	1.7
2 years	13.4	12.3	13.0	3.5
1 year	34.5	43.0	44.7	22.0
Less than 1 year.....	3.3	9.2	7.3	33.2
Minimum not fixed	8.5	11.4	9.6	34.2
Minority	0.3	0.3	0.3	0.3
Length of sentence unknown..	0.2	0.4	0.4	0.9

one-half (51.2 per cent) of inmates have a minimum sentence of less than three years, and a little over one-third (34.5 per cent) of one year. For 8.5 per cent there is no minimum fixed.

Of commitments to prisons and reformatories under an indeterminate sentence, much the greater proportion likewise have minimum sentences of a short period. Over one-half (52.2 per cent) are sentenced for a minimum term of less than two years. A little under two-thirds (64.5 per cent) have minimum terms of two years or less. Almost one-eighth (11.4 per cent) have no minimum term fixed.

The length of sentence when indeterminate is especially brief for females. One-fifth (22.0 per cent) of female commitments have minimum sentences of one year, and one-third (33.2 per cent) have minimum sentences of less than one year, while a little over one-third (34.2 per cent) do not have a minimum fixed.

In the first table on page 365 is given, according to a different classification by minimum length of sentence, under the indeterminate sentence, the percentage distribution of admissions, and of males and females separately, to prisons and reformatories (1926).

Practically one-half (48.4 per cent) have minimum sentences for less than two years, and three-fifths (60.0 per cent) for less than three. (The corresponding percentages for 1923 are not greatly different, or 52.4 and 64.7, respectively.) One-sixth (15.4

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
BY LENGTH OF INDETERMINATE SENTENCE

Minimum Length of Sentence	Per Cent Distribution		
	Total	Male	Female
Total.....	100.0	100.0	100.0
Minimum not fixed.....	16.9	13.6	63.3
Under 1 year.....	6.2	6.2	6.5
1 to 1.99 years.....	42.2	43.6	22.2
2 to 2.99 years.....	11.6	12.2	3.4
3 to 3.99 years.....	6.0	6.4	1.0
4 to 4.99 years.....	1.6	1.7	0.3
5 to 5.99 years.....	6.4	6.8	1.2
6 to 9.99 years.....	3.3	3.5	1.0
10 to 10.99 years.....	3.7	3.9	0.6
11 to 19.99 years.....	1.2	1.3	0.3
20 years and over.....	0.8	0.9	0.2

per cent) have sentences of five years and over, and one-twentieth (5.7 per cent) of ten years and over. There are one-sixth (16.9 per cent) with a minimum not fixed. If allowance be made for this proportion, there are only a little over one-fifth (22.7 per cent) with a sentence of three years and over. Of females almost two-thirds (63.3 per cent) are without fixed sentence. Only 8.0 per cent have sentences of two years and over.

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO PRISONS AND REFORMATORIES
BY MINIMUM SENTENCE CORRELATED WITH MAXIMUM SENTENCE

Minimum Length of Sentence	Maximum Length of Sentence (Years)									
	Total	20 or Over	11-19	10	6-9	5	4	3	2	Less than 2
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
5 years or over.....	14.6	42.5	22.4	22.8	20.6	0.2	—	—	—	—
20 years or over...	0.8	5.8	—	—	—	—	—	—	—	—
11 to 19 years.....	1.5	7.8	2.5	—	—	—	—	—	—	—
10 years	3.6	19.4	4.4	0.2	—	—	—	—	—	—
6 to 9 years.....	3.5	2.0	8.1	10.0	6.9	—	—	—	—	—
5 years	5.2	7.5	7.3	12.7	13.8	0.2	—	—	—	—
2 to 4 years.....	21.1	13.2	19.8	13.9	32.5	30.4	86.4	25.9	8.2	—
4 years	2.1	0.5	1.3	1.4	12.7	2.6	3.4	—	—	—
3 years	6.7	7.2	4.9	6.7	13.5	11.8	18.6	0.8	—	—
2 years	12.3	5.5	13.6	5.8	6.3	16.1	64.4	25.1	8.2	—
1 year	43.2	33.6	50.9	44.9	28.0	45.7	11.7	38.4	74.1	40.9
Less than 1 year.....	9.2	2.0	3.1	4.3	1.4	8.2	—	19.4	8.0	49.8
Minimum not fixed..	11.4	8.6	3.7	14.0	17.4	15.4	1.9	15.8	9.2	9.4
Minimum unknown..	0.4	0.1	0.1	—	—	—	—	0.5	0.5	—

In the second table on page 365 is given the percentage distribution of commitments to prisons and reformatories under indeterminate sentence according to minimum length of sentence correlated to maximum length (1923).

There often appears a wide disparity between the minimum and maximum limits of prison sentences under the indeterminate sentence. Of those having a maximum sentence of twenty years or more, over two-fifths (42.5 per cent) have a minimum of five years or over, one-eighth (13.2 per cent) a minimum of from two to four years, and one-third (33.6 per cent) a minimum of but one year. Of those having a maximum sentence of from eleven to nineteen years one-half (50.9 per cent) have a minimum of one year, and of those having a maximum of ten years a little under one-half (44.9 per cent).

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES BY MAXIMUM SENTENCE CORRELATED WITH MINIMUM SENTENCE

Maximum Length of Sentence	Per Cent Distribution		Maximum Length of Sentence	Per Cent Distribution	
	Male	Female		Male	Female
Total.....	100.0	100.0	Minimum 3 to 3.99 years, with maximum of— <i>Cont.</i>		
Minimum under 1 year, with maximum of—			6 to 9.99 years.....	1.5	0.7
Under 1 year	0.4	5.9	10 to 10.99 years.....	0.5	0.1
1 to 1.99 years.....	3.9	3.2	11 to 19.99 years.....	0.6	0.1
2 to 2.99 years.....	1.4	6.0	20 years and over.....	1.2	—
3 to 3.99 years.....	1.0	35.4	Minimum 4 to 4.99 years, with maximum of—		
4 to 4.99 years.....	—	—	4 to 4.99 years.....	—	—
5 to 5.99 years.....	5.2	6.6	5 to 5.99 years.....	0.3	—
6 to 9.99 years.....	2.3	0.9	6 to 9.99 years.....	1.0	0.3
10 to 10.99 years.....	3.2	1.8	10 to 10.99 years.....	0.2	0.1
11 to 19.99 years.....	1.3	0.4	11 to 19.99 years.....	0.1	—
20 years and over.....	0.8	0.2	20 years and over.....	0.1	—
Minimum 1 to 1.99 years, with maximum of—			Minimum 5 to 5.99 years, with maximum of—		
1 to 1.99 years.....	1.1	1.1	5 to 5.99 years.....	—	—
2 to 2.99 years.....	5.8	3.9	6 to 9.99 years.....	0.8	—
3 to 3.99 years.....	5.8	12.3	10 to 10.99 years.....	2.5	1.2
4 to 4.99 years.....	0.2	0.1	11 to 19.99 years.....	1.5	—
5 to 5.99 years.....	7.3	2.1	20 years and over.....	2.0	0.4
6 to 9.99 years.....	2.1	2.1	Minimum 6 to 9.99 years, with maximum of—		
10 to 10.99 years.....	7.4	2.4	6 to 9.99 years.....	0.3	0.2
11 to 19.99 years.....	8.2	2.0	10 to 10.99 years.....	1.0	0.4
20 years and over.....	5.5	3.3	11 to 19.99 years.....	2.0	0.7
Minimum 2 to 2.99 years, with maximum of—			20 years and over.....	0.3	—
2 to 2.99 years.....	0.2	—	Minimum 10 to 10.99 years, with maximum of—		
3 to 3.99 years.....	1.8	0.6	10 to 10.99 years.....	—	—
4 to 4.99 years.....	1.9	1.1	11 to 19.99 years.....	0.5	0.2
5 to 5.99 years.....	4.2	1.1	20 years and over.....	3.5	0.7
6 to 9.99 years.....	0.4	0.3	Minimum 11 to 19.99 years, with maximum of—		
10 to 10.99 years.....	0.7	0.2	11 to 19.99 years.....	0.3	0.1
11 to 19.99 years.....	2.4	0.7	20 years and over.....	1.0	0.3
20 years and over.....	0.6	0.6	Minimum 20 years and over, with maximum of—		
Minimum 3 to 3.99 years, with maximum of—			20 years and over.....	0.8	0.2
3 to 3.99 years.....	—	—			
4 to 4.99 years.....	0.3	0.1			
5 to 5.99 years.....	2.3	0.3			

The correlation of the minimum length of sentence with the maximum length under the indeterminate sentence is also shown in a somewhat different arrangement with respect to male and female admissions to prisons and reformatories (1926), in the table on page 366.

Here is manifest in particular the large proportion having a relatively short minimum sentence and a relatively long maximum sentence—rather evidence of an intent to create a more flexible indeterminate sentence, with a small lower limit and a large upper limit. About one-fifth of males have a minimum sentence of one year and under two years and a maximum sentence of ten years and over; while about one-eighth have a minimum sentence of under one year and a maximum of five years and over. The range of diversity between the two forms of sentence is also manifest from the circumstance that the average length of the minimum sentence for males is 2.4 years and the average length of the maximum sentence 10.3 years. The corresponding figures for females are 0.6 year and 5.2 years.

PERCENTAGE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY MINIMUM LENGTH OF SENTENCE ACCORDING TO OFFENSE

Sex and Offense	Per Cent of Total				
	Under 1 Yr.	1 to 1.99 Yrs.	2 to 2.99 Yrs.	3 to 4.99 Yrs.	5 Yrs. and Over
Male	19.8	43.6	12.2	8.0	16.4
Homicide	8.8	15.9	11.0	9.7	54.5
Rape	18.3	24.7	13.0	11.3	32.6
Robbery	8.6	12.2	7.3	13.4	58.5
Assault	17.1	36.5	21.7	10.1	14.6
Burglary	16.1	48.3	14.2	8.7	12.7
Forgery	17.3	57.7	15.3	5.0	4.7
Embezzlement	8.6	60.2	16.4	11.1	3.7
Fraud	28.1	54.3	7.4	7.9	2.3
Possession of stolen property...	33.0	48.9	10.4	5.4	2.3
Larceny	18.5	60.6	9.9	5.7	5.2
Sex offenses, except rape.....	17.9	42.7	17.4	7.1	15.0
Violation of liquor laws.....	55.5	30.9	11.9	1.7	—
Violation of drug laws.....	67.1	25.5	4.8	1.7	0.9
Carrying weapons	20.8	58.9	12.2	5.6	2.5
Nonsupport or neglect of family	24.2	69.8	5.5	0.4	—
Other	30.5	40.4	12.1	11.8	5.2
Female	69.7	22.2	3.4	1.3	3.4
Larceny	46.4	45.1	6.5	—	2.0
Sex offenses	75.7	22.1	1.8	—	0.4

In the foregoing table is given, in respect to admissions under the indeterminate sentence to prisons and reformatories, the percentage for the several offenses according to minimum length of sentence, by sex (1926).

With males, there are a relatively large proportion of sentences with a minimum length of less than one year for violation of drug laws, violation of liquor laws, possession of stolen property, fraud, nonsupport of family, and carrying weapons; of one and under two years for nonsupport of family, larceny, embezzlement, carrying weapons, forgery, fraud, possession of stolen property, and burglary; of two and under three years for assault, sex offenses (not rape), embezzlement, forgery, burglary, and rape; for three and under five years for robbery, rape, embezzlement, assault, homicide, and burglary; and of five years and over for robbery, homicide, and rape. With females, there are a relatively large proportion of sentences of less than one year for sex offenses, and of one year and under three for larceny. In general, the longer sentences are for the more serious offenses, especially those against the person, together with certain offenses against property for gain. For the more serious the lower limit of the sentence is especially high.

CONTRAST OF LENGTH OF SENTENCE UNDER INDETERMINATE SENTENCE AND UNDER DEFINITE SENTENCE

In the table on page 369 is given, with respect to inmates in and commitments to prisons and reformatories, the percentage distribution according to maximum length of sentences of different periods, under the definite and under the indeterminate sentence (1923).

Among prison inmates, for all groups (except life) having a maximum sentence of ten years or over the proportion is greater with respect to the indeterminate sentence than with respect to the definite. The proportion having ten years is twice as great, and the proportion having from eleven to nineteen years and having twenty years is three times as great, in the one case as in the other. For sentences of a few years the proportion with the definite sentence is in general notably higher than the proportion with the indeterminate. With sentences of two years or less the proportion is about three times as great for the one as for the other. Life sentences have a far larger proportion with the definite sentence than with the indeterminate.

Among commitments, the proportion with sentences for ten

PERCENTAGE DISTRIBUTION OF PRISONERS IN PRISONS AND REFORMATORIES
BY LENGTH OF SENTENCE UNDER DEFINITE AND INDETERMINATE SENTENCE

Maximum Length of Sentence	Per Cent Distribution			
	Inmates		Commitments	
	Definite Sentence	Indeterminate Sentence	Definite Sentence	Indeterminate Sentence
Total.....	100.0	100.0	100.0	100.0
10 years or over.....	41.6	52.9	14.3	44.3
Life	19.6	3.6	5.5	2.0
Maximum not fixed.....	—	0.4	—	1.1
21 years or over.....	4.7	5.9	2.0	4.4
20 years	3.1	9.8	1.0	7.1
11 to 19 years.....	6.8	18.4	2.5	16.0
10 years	7.4	14.8	3.4	13.8
Under 10 years.....	58.4	46.7	85.7	54.9
6 to 9 years.....	7.0	9.8	3.6	8.0
5 years	11.7	17.6	8.7	19.8
4 years	5.2	2.8	3.9	2.5
3 years	8.8	8.8	10.2	10.4
2 years	14.6	4.9	23.1	7.2
1 year	10.4	2.6	31.4	6.2
Under 1 year.....	0.7	0.2	4.8	0.7
Minority	—	0.3	—	0.3
Length of sentence unknown..	—	0.1	—	0.6

years or over is three times as great, and the proportion with sentences for from five to nine years is over twice as great, in the case of the indeterminate sentence as in the case of the definite. On the other hand, the proportion with sentences of less than two years is over five times as great, and the proportion with sentences of from two to four years is almost twice as great, in the case of the definite sentence as in the case of the indeterminate. Under the definite sentence the percentage having a sentence of ten years or over is 14.3; from five to nine years, 12.3; from two to four years, 37.2; and less than two years, 36.2. The respective percentages under the indeterminate sentence are 44.3, 27.8, 20.2, and 6.9.

In the table on page 370 is given the percentage distribution of admissions, and of males and females separately, to prisons and reformatories according to maximum length of sentence, both under definite and under indeterminate sentence (1926).

Here much the same results are found. There are decidedly higher proportions for shorter sentences under the definite sentence, and decidedly higher proportions for longer sentences un-

PERCENTAGE DISTRIBUTION OF ADMISSIONS TO PRISONS AND REFORMATORIES
BY LENGTH OF SENTENCE UNDER DEFINITE AND INDETERMINATE SENTENCE

Maximum Length of Sentence	Per Cent Distribution					
	Under Definite Sentence			Under Indeterminate Sentence		
	Total	Male	Female	Total	Male	Female
Total	100.0	100.0	100.0	100.0	100.0	100.0
Under 1 year.....	7.5	7.1	17.6	0.7	0.4	4.5
1 to 1.99 years.....	35.0	34.9	36.5	4.8	5.0	3.2
2 to 2.99 years.....	22.2	22.5	14.9	7.4	7.4	7.5
3 to 3.99 years.....	9.6	9.5	12.8	10.5	8.6	36.7
4 to 4.99 years.....	3.4	3.4	2.1	2.3	2.4	0.9
5 to 5.99 years.....	8.3	8.4	5.4	18.5	19.3	7.7
6 to 9.99 years.....	3.2	3.2	1.8	8.0	8.3	3.5
10 to 10.99 years.....	2.7	2.8	2.4	14.6	15.4	4.7
11 to 19.99 years.....	2.1	2.7	2.3	15.9	16.9	3.1
20 years and over.....	2.2	2.2	1.1	12.4	13.0	3.5
Maximum not fixed.....	—	—	—	1.8	0.3	23.7
Minority	—	—	—	0.4	0.4	0.1
Life	3.8	3.8	2.8	2.6	2.7	0.8
Term not reported.....	0.1	0.1	0.3	—	—	—

der the indeterminate. The proportion having a maximum sentence of less than one year is 7.5 per cent under the definite sentence, and 0.7 per cent under the indeterminate; of less than two years, 42.5 per cent, as against 5.5 per cent; and of less than three years, 64.7 per cent, as against 12.9 per cent. On the other hand, the proportion having a maximum sentence of five years and over is 69.4 per cent under the indeterminate sentence, and 18.5 per cent under the definite; having one of ten years and over, 42.9 per cent, as against 7.0 per cent; and having one of twenty years and over, 12.4 per cent, as against 2.2 per cent. With females under the indeterminate sentence, almost one-fourth (23.7 per cent) have the maximum sentence unfixed.

The average length of sentence under the definite sentence with males is 4.62 years, and under the indeterminate sentence 10.27 years. (If life sentences are excluded, the respective numbers are 3.20 years and 9.40 years.) The respective numbers for females are 3.70 years and 5.18 years.

In certain States the average length of stay in prison is found to be one-fifth or one-third greater in case of the indeterminate sentence than in the case of the definite sentence (not from census figures).

The potential length of the prison term seems on the whole

to be appreciably increased by the use of the indeterminate sentence. Higher limits are in general found when it is employed than in the case of the definite sentence. In other words, time in prison is, not less, but greater under the indeterminate sentence. Offenders given it have a longer time to stay behind bars than do those given a so-called definite sentence. The greater length of the indeterminate sentence may in some part be due to the attitude of many courts in regarding the definite sentence as the lower as well as the upper limit of the offender's term of imprisonment.

CONTRAST OF LENGTH OF SENTENCE ACCORDING TO CHARACTER OF OFFENSES

In the following table is given, according to principal offenses, the percentage committed to prisons and reformatories by sen-

PERCENTAGE OF COMMITMENTS TO PRISONS AND REFORMATORIES ACCORDING TO LENGTH OF SENTENCE UNDER DEFINITE AND INDETERMINATE SENTENCE BY OFFENSE

Offense	Per Cent of Total							
	Under Definite Sentence				Under Indeterminate Sentence			
	Sentenced for—				Sentenced for Maxi- mum Term of—			
	10 Years or Over	5-9 Years	2-4 Years	Less than 2 Years	10 Years or Over	5-9 Years	2-4 Years	Less than 2 Years
Total	14.3	12.3	37.2	36.2	44.3	27.8	20.2	6.9
Against the person	54.8	14.9	19.9	10.3	56.0	20.9	20.6	2.4
Assault	7.4	20.7	42.4	29.5	38.5	23.5	33.6	4.2
Homicide	71.6	12.9	11.9	3.7	71.9	18.4	9.0	0.7
Other	—	—	—	—	—	—	—	—
Against property	7.0	15.5	48.0	29.5	48.5	31.9	15.6	3.4
Burglary	5.4	17.8	59.0	17.9	51.5	30.9	14.6	2.7
Embezzlement	—	4.3	44.3	51.3	49.3	31.3	16.7	2.8
Forgery	2.3	9.0	60.3	28.4	57.4	19.6	17.7	5.2
Fraud	0.5	9.2	34.4	55.9	38.0	29.8	24.0	8.3
Possession of stolen property	1.7	6.6	39.2	52.5	13.0	56.5	24.0	5.2
Larceny	1.9	12.6	46.7	38.8	33.9	41.7	19.3	4.3
Robbery	39.0	36.0	21.3	3.7	75.0	17.9	5.4	0.4
Other	4.7	13.4	43.0	38.9	40.1	38.9	16.7	3.7
Against sex morality	20.8	17.2	32.7	29.3	44.2	22.8	28.2	3.7
Rape	39.3	22.5	25.3	13.0	63.8	20.1	13.5	1.3
Other	4.4	12.5	39.4	43.8	26.2	25.2	41.7	6.0
Against administration of government.	3.5	6.3	29.6	60.6	15.7	54.6	19.4	10.2
Against public health and safety	0.6	4.7	36.6	58.1	9.1	31.4	46.7	11.2
Violation of drug laws	0.3	4.6	35.6	59.5	10.4	38.8	33.6	16.4
Other	—	—	—	—	7.4	22.2	63.0	4.6
Against sobriety, good order, and public policy	0.2	1.9	20.8	77.1	5.3	11.1	32.9	50.6
Violation of liquor laws	0.1	1.7	21.0	77.2	0.4	11.8	26.6	61.0
Other	—	—	—	—	20.7	8.9	52.7	17.8
Against children and prisoner's family	—	—	—	—	—	12.3	67.7	18.5
Unclassified and unknown	6.0	9.5	37.9	46.6	46.4	13.5	26.6	4.1

tences for different periods, whether under a definite sentence or under an indeterminate sentence, with a maximum term (1923).

Among commitments for a definite time, the proportion having ten years or more is relatively large (above the average) for homicide, rape, and robbery; having from five to nine years, for robbery, rape, assault, burglary, general offenses against property, and homicide; having from two to four years, for forgery, burglary, larceny, embezzlement, general offenses against property, assault, general offenses against sex morality and possession of stolen property; and having less than two years for violation of liquor laws, offenses against the administration of government, violation of drug laws, fraud, possession of stolen property, embezzlement, general offenses against sex morality, general offenses against property, and larceny.

Among commitments for a maximum term under the indeterminate sentence, the proportion having ten or more years is relatively large for robbery, homicide, rape, forgery, burglary, and embezzlement; having from five to nine years, for possession of stolen property, offenses against the administration of government, larceny, general offenses against property, violation of drug laws, embezzlement, burglary, and fraud; having from two to four years, for offenses against children and one's family, general offenses against public health and safety, unspecified offenses against sobriety, good order, and public policy, general offenses against sex morality, assault, violation of drug laws, fraud, and possession of stolen property; and having less than two years, for violation of liquor laws, violation of drug laws, offenses against children and one's family, general offenses against sobriety, good order, and public policy, offenses against the administration of government, and possession of stolen property.

In the table on page 373 is given for the several offenses the percentage of male admissions to prisons and reformatories according to the number of years of sentence, under the definite sentence and for the maximum time under the indeterminate sentence (1926).

For a term of less than two years relatively high proportions are found with the definite sentence for nonsupport of family, violation of liquor laws, carrying weapons, assault, possession of stolen property, violation of drug laws, fraud, embezzlement, and larceny, and with the indeterminate sentence for violation of liquor laws, nonsupport of family, and fraud; for from two to less than five years, with the definite sentence for forgery, burglary,

PERCENTAGE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY LENGTH OF
DEFINITE AND INDETERMINATE SENTENCE ACCORDING TO OFFENSE

Offense	Per Cent of Total							
	Under Definite Sentence				Under Indeterminate Sentence			
	Sentenced for—				Sentenced to a Maximum of—			
	Under 2 Yrs.	2 to 4.99 Yrs.	5 to 9.99 Yrs.	10 Yrs. and Over	Under 2 Yrs.	2 to 4.99 Yrs.	5 to 9.99 Yrs.	10 Yrs. and Over
Total.....	42.0	35.4	11.7	10.8	5.4	18.4	27.6	48.2
Homicide	4.3	12.0	12.5	71.1	1.8	4.9	15.0	78.2
Rape	18.5	25.7	24.0	31.8	1.1	12.2	23.4	63.2
Robbery	6.4	19.3	36.6	37.7	0.2	3.7	13.4	82.7
Assault	54.0	26.2	12.0	7.8	3.7	28.1	24.8	43.2
Burglary	24.7	49.9	18.7	6.7	1.8	15.3	28.5	54.0
Forgery	30.6	57.0	10.2	2.2	5.0	18.2	15.9	60.7
Embezzlement	48.3	38.5	11.1	2.1	2.5	20.1	26.6	50.8
Fraud	51.5	39.4	7.9	1.2	7.9	22.3	30.2	39.7
Possession of stolen property	53.3	39.7	6.7	0.3	2.7	31.0	52.7	13.6
Larceny	46.0	41.3	11.1	1.6	3.4	20.2	37.8	37.7
Sex offenses, except rape	39.9	44.6	10.6	4.9	4.3	26.2	29.5	40.0
Violation of liquor laws.	67.9	31.0	1.0	—	49.3	32.6	17.8	0.2
Violation of drug laws.	53.0	38.3	7.4	1.3	3.5	10.4	83.5	2.6
Carrying weapons	55.6	31.6	12.3	0.6	1.0	64.5	31.0	3.0
Nonsupport or neglect of family	85.5	11.5	3.0	—	10.6	69.4	20.0	—
Other	62.6	27.1	6.8	3.4	9.0	21.6	28.2	40.4
Not reported	64.2	25.8	0.8	0.8	3.0	35.8	23.9	37.3

sex offenses (not rape), larceny, possession of stolen property, fraud, embezzlement, and violation of drug laws, and with the indeterminate sentence for nonsupport of family, carrying weapons, violation of liquor laws, possession of stolen property, assault, sex offenses, fraud, larceny, and embezzlement; for from five to less than ten years with the definite sentence for robbery, rape, burglary, homicide, carrying weapons, and assault, and with the indeterminate sentence for violation of drug laws, possession of stolen property, larceny, carrying weapons, fraud, sex offenses, and burglary; and for ten years and over with the definite sentence for homicide, robbery, and rape, and with the indeterminate sentence for robbery, homicide, rape, forgery, burglary, and embezzlement.

With the indeterminate sentence is discerned a tendency to add

to the most serious offenses (which under the definite sentence are principally those against the person, and which are penalized by the longest terms) nearly all the offenses against property for gain. Offenses of less serious character in general are also with the indeterminate sentence given more extended punishment.

In the following table is given the average length of maximum sentence for the different offenses among male and female admissions under the definite and under the indeterminate sentence (1926).

AVERAGE LENGTH OF SENTENCE OF ADMISSIONS TO PRISONS AND REFORMATORIES BY OFFENSE UNDER DEFINITE AND INDETERMINATE SENTENCE

Offense	Average Length of Sentence (Years)			
	Under Definite Sentence		Under Indeterminate Sentence	
	Male	Female	Male	Female
Total	4.62	3.70	10.27	5.18
Homicide	23.23	17.16	17.90	14.11
Rape	9.29	—	13.61	—
Robbery	9.73	—	19.68	—
Assault	2.91	1.40	8.69	11.46
Burglary	3.71	—	10.63	11.02
Forgery	2.47	1.79	10.34	10.04
Embezzlement	2.52	—	8.53	—
Fraud	2.10	—	7.13	—
Possession of stolen property	2.01	—	5.73	—
Larceny	2.26	2.02	7.61	5.33
Sex offenses, except rape.....	2.81	1.88	9.22	3.22
Violation of liquor laws.....	1.45	1.33	2.21	1.04
Violation of drug laws.....	2.16	2.26	5.36	—
Carrying weapons	2.14	—	4.34	—
Nonsupport or neglect of family ..	1.17	—	3.11	—
Other	2.14	1.79	8.06	2.97
Not reported	1.58	—	7.32	—

For all offenses the average length of sentence in general is notably less under the definite sentence than under the indeterminate, save in the case of homicide. This exception is due to the circumstance that for this offense definite life sentences are relatively frequent. (If prisoners under life sentence are excluded from the table, the average length of sentence for homicide among males is 11.5 years with respect to the definite sentence, and 14.4 with respect to the indeterminate sentence.) (Among females the average length of sentence is also higher

for violation of liquor laws under the definite than under the indeterminate sentence.) The difference between the two forms of sentences is greatest in the case of offenses against property for gain, assault, and general sex offenses. Under the indeterminate sentence the average length of sentence is actually greater for robbery than for homicide.

CHAPTER XLIII

TIME SERVED UNDER SENTENCE

ACTUAL LENGTH OF TIME SERVED

In the first table on page 377 is given for the several geographic divisions and the several States of the United States the average time served in prisons and reformatories by male and female prisoners discharged in one year (1926).¹

Actual confinement of prisoners in the United States is on the whole of rather brief duration. The average for the country in general is with males practically two years (1.96 years). With females it is over one year (1.20). There is found considerable variation as to the time served in the different States; but this variation is by no means so great as that with respect to the time of maximum sentence. Among males the highest period is about three years, and the lowest about one year, though in fact both of these periods are rather exceptional. In some States the average time for females is less than one year.

In the second table on page 377 is given the percentage distribution of prisoners leaving prisons and reformatories according to time served therein (1923).

Of all prisoners in prisons and reformatories a little over two-fifths (41.6 per cent) remain but one year, and three-tenths (30.2 per cent) less than one year. Almost three-fourths (71.8 per cent) remain less than two years. One-fifth (21.2 per cent) serve from two to four years. There are 5.9 per cent who serve five years or over, and 1.4 per cent who serve ten years or over. The mean time served is somewhat over one year.

In the table on page 378 is given the percentage distribution of prisoners, and of males and females separately, discharged from prisons and reformatories according to the time actually served (1926).

¹ The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929—unless otherwise indicated.

AVERAGE TERM SERVED BY PRISONERS DISCHARGED FROM PRISONS AND REFORMATORIES BY STATES

State	Average Term Served (Years)		State	Average Term Served (Years)	
	Male	Fe-male		Male	Fe-male
United States	1.96	1.20	South Atlantic (<i>Continued</i>)		
Federal prisons and reformatories	1.37	—	Maryland	0.93	0.53
State prisons and reformatories	2.04	1.20	District of Columbia	—	—
New England	2.01	1.76	Virginia	2.18	1.79
Maine	1.91	2.42	West Virginia	2.05	1.87
New Hampshire ...	2.23	1.45	North Carolina	2.86	2.21
Vermont	1.04	0.92	South Carolina	1.56	1.34
Massachusetts	1.90	1.79	Georgia	—	—
Rhode Island	2.38	0.92	Florida	—	—
Connecticut	2.61	2.01	East South Central...	2.24	1.80
Middle Atlantic	2.32	1.59	Kentucky	1.99	1.15
New York	2.35	1.50	Tennessee	2.68	—
New Jersey	1.79	1.85	Alabama	—	—
Pennsylvania	2.65	1.93	Mississippi	2.61	2.81
East North Central...	2.11	0.72	West South Central...	1.67	0.89
Ohio	1.80	0.24	Arkansas	1.27	0.57
Indiana	2.26	1.60	Louisiana	2.33	1.27
Illinois	2.94	2.06	Oklahoma	1.66	1.07
Michigan	1.92	—	Texas	—	—
Wisconsin	1.83	1.52	Mountain	1.56	1.41
West North Central..	2.18	0.68	Montana	1.25	1.08
Minnesota	2.07	1.76	Idaho	—	—
Iowa	2.99	1.57	Wyoming	2.70	—
Missouri	1.87	1.99	Colorado	1.47	1.38
North Dakota	1.41	0.68	New Mexico	—	—
South Dakota	1.33	1.00	Arizona	1.73	1.83
Nebraska	2.15	1.02	Utah	1.58	0.88
Kansas	2.68	0.47	Nevada	1.55	—
South Atlantic	1.64	1.11	Pacific	2.44	1.85
Delaware	—	—	Washington	1.94	1.34
			Oregon	1.22	1.15
			California	3.04	2.52

PERCENTAGE DISTRIBUTION OF PRISONERS LEAVING PRISONS AND REFORMATORIES ACCORDING TO TIME SERVED

Time Served	Per Cent Distribution	Time Served	Per Cent Distribution
Total.....	100.0	2 years	13.0
5 to 49 years.....	5.9	1 year	41.6
10 to 49 years.....	1.4	Less than 1 year.....	30.2
5 to 9 years.....	4.5	9 to 11 months.....	11.9
2 to 4 years.....	21.2	6 to 8 months.....	8.0
4 years	2.5	3 to 5 months.....	5.3
3 years	5.7	Less than 3 months .	5.0
		Time unknown	1.1

PERCENTAGE DISTRIBUTION OF PRISONERS DISCHARGED FROM PRISONS AND
REFORMATORIES ACCORDING TO TIME SERVED

Time Served	Per Cent Distribution		
	Total	Male	Female
Total.....	100.0	100.0	100.0
Under 1 year.....	31.9	30.6	50.9
1 to 1.99 years.....	33.2	34.1	19.9
2 to 2.99 years.....	12.3	12.5	9.4
3 to 3.99 years.....	5.8	6.0	3.2
4 to 4.99 years.....	3.1	3.3	1.4
5 to 9.99 years.....	5.0	5.3	1.6
10 years and over.....	1.1	1.2	0.1
Not reported	7.5	7.1	13.6

Of such prisoners over three-fourths (77.4 per cent) are actually confined less than three years, practically two-thirds (65.1 per cent) less than two years, and almost one-third (31.9 per cent) less than one year. Much under one-tenth (6.1 per cent) remain more than five years, and only 1.1 per cent more than ten years. Of female prisoners one-half (50.9 per cent) are in prison less than one year, and over two-thirds (70.8 per cent) less than two years.

Of persons leaving jails and workhouses¹ (1923) nearly two-fifths (38.7 per cent) have served less than ten days; a little over one-half (56.0 per cent), less than twenty days; somewhat over two-thirds (67.4 per cent), less than one month; somewhat over four-fifths (81.8 per cent), one month or less; and very nearly all (98.8 per cent), less than one year. The population of such local institutions is an ever shifting one, and is in practically constant flux.²

In the first table on page 379 is given the percentage distribution of male and of female juvenile delinquents according to length of time spent in special institutions for them (1923).

The stay of juvenile delinquents in special institutions is also relatively brief. Of males two-fifths (40.0 per cent) remain less than one year, over three-fourths (77.0 per cent) less than two years, and nine-tenths (89.2 per cent) less than three years. Only 2.6 per cent remain five years or over. Females in general have a longer stay than males. A little over one-fifth (22.4 per cent) remain less than one year, a little over one-half (54.0 per cent) less than two years, and three-fourths (75.4 per cent)

¹ See p. 386.

² On the character of the jail and workhouse population, see pp. 495, 499.

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS BY TIME SPENT IN SPECIAL INSTITUTIONS

Time Served	Per Cent Distribution	
	Male	Female
Total.....	100.0	100.0
Less than 1 year.....	40.0	22.4
1 year, less than 2.....	37.0	31.6
2 years, less than 3.....	12.2	21.4
3 years, less than 4.....	5.0	12.4
4 years, less than 5.....	2.8	6.3
5 years and over.....	2.6	5.3
Unknown	0.6	0.7

less than three years. Over one-tenth (11.6 per cent) remain four years or longer, 5.3 per cent remaining not less than five years.

In the following table is given the percentage distribution of juvenile delinquents, male and female, according to time spent in general penal institutions (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS BY TIME SPENT IN GENERAL INSTITUTIONS

Time Served	Per Cent Distribution	
	Male	Female
Total.....	100.0	100.0
Less than 6 months.....	73.4	87.0
6 months, less than 1 year.....	10.0	5.5
1 year, less than 2 years.....	10.5	2.8
2 years, less than 3 years.....	0.8	0.3
3 years, less than 5 years.....	—	0.3
5 years and more.....	—	—
Not reported	5.3	4.3

Juvenile delinquents have an even shorter stay in regular penal institutions (along with adults) than in special juvenile institutions. The difference is the more pronounced in the case of females. Almost three-fourths of boys and almost nine-tenths of girls remain less than six months. Somewhat over nine-tenths of boys and very nearly all girls remain less than two years. The sojourn of youthful offenders in general penal institutions seems often of but temporary character. Sentiment is growing against their being so placed at all.

LENGTH OF TIME SERVED IN RELATION TO CHARACTER OF OFFENSES

In the following table is given as to males and as to females the percentage leaving prisons and reformatories according to length of time served for the principal offenses (1923).

PERCENTAGE OF PRISONERS LEAVING PRISONS AND REFORMATORIES ACCORDING TO TIME SERVED BY OFFENSE

Sex and Offense	Per Cent of Total				
	10-49 Years	5-9 Years	2-4 Years	1 Year	Less than 1 Year
	MALE				
Total	1.5	4.7	21.7	42.1	28.9
Assault	1.1	4.2	24.0	39.7	31.0
Homicide	13.9	21.2	29.0	17.5	17.5
Burglary	0.5	4.0	25.2	48.2	21.4
Embezzlement	—	—	15.6	49.6	34.8
Forgery	0.3	2.8	19.9	51.5	25.0
Fraud	—	1.5	15.5	40.6	42.4
Possession of stolen property.....	—	0.2	13.7	57.4	28.7
Larceny	0.1	1.4	20.1	50.2	27.8
Robbery	2.0	9.7	35.6	32.4	19.8
Arson	1.9	9.7	27.2	40.8	20.4
Use of another's property.....	—	—	17.4	50.8	31.8
Bigamy and polygamy.....	—	—	16.0	53.8	29.4
Rape	3.4	13.0	31.2	30.8	21.0
Other offenses against sex morality	0.5	8.9	27.3	31.7	31.7
Carrying concealed weapons.....	—	0.5	10.5	58.4	29.5
Violation of drug laws	—	0.1	3.4	29.4	66.3
Violation of liquor laws.....	0.1	—	1.5	29.2	69.0
Nonsupport or neglect of family...	0.7	0.7	5.1	56.2	36.5
Violation of U. S. postal laws, etc..	—	—	23.6	44.1	32.3
Other and unknown offenses.....	0.7	3.4	20.5	34.4	28.2
Sex and Offense	FEMALE				
	10-49 Years	5-9 Years	2-4 Years	1 Year	Less than 1 Year
	FEMALE				
Total	0.5	1.2	13.9	33.6	50.5
Larceny	—	—	15.0	49.7	35.3
Prostitution	—	—	11.8	33.8	54.0
Vagrancy	—	—	18.1	28.4	53.4
Other and unknown offenses.....	0.2	0.9	12.4	32.5	53.6

Offenses for which prison terms of the greatest length are served are in general offenses against the person (including homi-

cide and rape), against habitation, and against property for gain. Prisoners convicted of homicide generally have the longest time of all.

Among males, the proportion having served terms of from ten to forty-nine years, and from five to nine years, is relatively large for homicide, rape, robbery, and arson; of from two to four years, for robbery, homicide, rape, arson, burglary, assault, and violation of United States postal laws; of one year, for carrying concealed weapons, possession of stolen property, nonsupport of family, bigamy and polygamy, forgery, using another's property, larceny, embezzlement, burglary, and violation of United States postal laws; and of less than one year, for violation of liquor laws, violation of drug laws, fraud, nonsupport of family, embezzlement, violation of United States postal laws, using another's property, assault, carrying concealed weapons, and bigamy and polygamy. Among females, the proportion of prisoners having served terms of from two to four years is relatively large for vagrancy and larceny; of one year, for larceny; and of less than one year, for prostitution and vagrancy.

In the table on page 382 is given the percentage leaving jails and workhouses according to length of time served for the principal offenses (1923).

The terms of prisoners in jails and workhouses are largely in direct relation to the seriousness of their offenses, offenses against property for gain generally coming first. The proportion who have served sentences of six months or over is relatively large (above the average) for burglary, robbery, rape, possession of stolen property, violation of drug laws, forgery, larceny, nonsupport of family, embezzlement, carrying concealed weapons, assault, and fraud; of from two to five months, for violation of drug laws, rape, possession of stolen property, nonsupport of family, embezzlement, forgery, violation of liquor laws, larceny, carrying concealed weapons, robbery, burglary, assault, and vagrancy; of one month, for violation of liquor laws, vagrancy, larceny, fraud, carrying concealed weapons, prostitution, assault, embezzlement, forgery, and nonsupport of family; of from ten to twenty-nine days, for trespassing, vagrancy, drunkenness, disorderly conduct, gambling, fraud, and prostitution; and of less than ten days, for violation of city ordinances, violation of traffic laws, contempt of court, drunkenness, gambling, trespassing, and disorderly conduct.

In the table on page 383 is given the percentage of male and of

PERCENTAGE OF PRISONERS LEAVING JAILS AND WORKHOUSES ACCORDING
TO TIME SERVED BY OFFENSE

Offense	Per Cent of Total				
	6 Mos. or Over	2-5 Mos.	1 Mo.	10-29 Days	Less than 10 Days
Total	4.3	14.1	14.5	29.3	37.8
Assault	11.3	23.4	18.8	24.0	22.3
Homicide	—	—	—	—	—
Burglary	49.4	24.5	10.6	7.6	7.9
Embezzlement	12.3	31.9	18.4	19.6	17.8
Forgery	20.4	30.1	17.3	17.6	14.7
Fraud	5.8	12.9	20.4	32.0	29.0
Possession of stolen property...	21.0	38.2	12.5	14.6	13.7
Larceny	15.6	29.1	20.5	20.9	13.9
Robbery	46.2	28.4	12.2	9.1	4.1
Trespassing	0.6	3.1	11.0	40.7	44.5
Prostitution	2.1	12.7	19.2	31.3	34.7
Rape	38.3	39.9	8.5	8.5	4.8
Other sex offenses	12.1	21.6	16.8	24.0	25.5
Contempt of court	3.2	10.1	10.6	15.3	60.8
Carrying concealed weapons ...	12.1	28.5	20.3	19.6	19.5
Violation of city ordinances ...	0.1	2.6	4.2	17.8	75.3
Violation of drug laws	20.8	57.3	10.4	6.9	4.6
Violation of traffic laws	0.5	4.9	8.0	20.0	66.6
Disorderly conduct	0.7	7.9	13.6	34.4	43.5
Drunkenness	0.1	4.1	8.7	35.9	51.2
Gambling	0.6	4.8	10.2	34.3	50.2
Vagrancy	1.4	16.2	21.1	36.1	25.2
Violation of liquor laws	4.3	29.8	26.2	20.8	18.9
Nonsupport or neglect of family	15.0	32.1	16.6	16.5	19.8
Other and unknown	13.7	23.1	16.1	20.2	26.8

female offenders leaving jails and workhouses according to time served for the principal offenses (1923).

LENGTH OF TIME SERVED IN CONTRAST WITH LENGTH OF
SENTENCE

Not only is the time of actual imprisonment of prisoners in penal institutions of rather brief duration in general, but there is found to exist a great difference between the length of the sentence imposed and the actual time spent behind bars. Though the average length of the maximum sentence for the United States is with males 6.28 years, the average length of actual time served is only 1.96 years. The ratio between the time of the maximum sentence and the time served—the percentage which the latter constitutes of the former—is 31.2 per cent. That

TIME SERVED UNDER SENTENCE

383

PERCENTAGE OF MALE AND FEMALE PRISONERS LEAVING JAILS AND WORK-
HOUSES ACCORDING TO TIME SERVED BY OFFENSE

Offense	Per Cent of Total				
	6 Mos. or Over	2-5 Mos.	1 Mo.	10-29 Days	Less than 10 Days
Total:					
Male	4.4	13.9	14.4	29.3	38.0
Female	3.3	15.7	16.2	29.5	35.3
Drunkenness:					
Male	0.1	3.8	8.4	35.9	51.8
Female	0.1	10.6	14.1	35.8	39.4
Disorderly conduct:					
Male	0.7	7.8	13.5	34.6	43.4
Female	0.4	8.8	14.1	32.9	43.8
Violation of liquor laws:					
Male	4.2	30.2	26.4	20.7	18.4
Female	5.0	20.2	23.2	22.3	29.3
Vagrancy:					
Male	1.3	15.0	21.3	36.9	25.5
Female	1.9	27.3	19.5	28.8	22.5
Larceny:					
Male	16.3	30.0	20.8	20.8	12.1
Female	8.7	19.1	17.6	22.4	32.2
Assault:					
Male	11.7	23.7	19.0	24.1	21.4
Female	6.1	19.6	16.1	23.2	35.0
Violation of city ordinances:					
Male	0.1	2.4	4.0	17.4	76.2
Female	—	6.8	9.9	27.2	56.2
Violation of drug laws:					
Male	20.8	56.2	10.7	7.5	4.8
Female	21.4	65.8	8.2	2.1	2.5
Prostitution (fornication):					
Male	2.7	13.1	16.8	26.6	40.7
Female	1.7	12.4	20.5	33.9	31.4
Rape:					
Male	38.3	39.9	8.5	8.5	4.8
Other sex offenses:					
Male	15.5	24.0	15.1	23.0	22.4
Female	3.8	16.0	20.7	26.5	33.0
Other and unknown:					
Male	10.4	17.3	14.0	22.0	36.3
Female	12.3	18.4	12.2	22.7	34.5

is, as a rule the time of actual imprisonment is a little less than one-third of the time of the maximum sentence (1926).

With females the average time of the maximum sentence is 3.82 years, and the average actual time served 1.20 years—with a ratio of 31.4 per cent, almost exactly the same as that for males. (Maximum sentence refers to discharges.)

In the following table is given for males and females dis-

charged from prisons and reformatories in contrast, by different offenses, the average length of maximum sentence and the average length of actual confinement, together with the ratio of the one to the other—the proportion which the years of actual confinement constitute of the years of sentence (1926).

AVERAGE LENGTH OF MAXIMUM SENTENCE AND OF TIME SERVED BY PRISONERS
DISCHARGED FROM PRISONS AND REFORMATORIES BY OFFENSE

Offense	Male			Female		
	Years		Per Cent of Length of Sentence by Time Served	Years		Per Cent of Length of Sentence by Time Served
	Average Length of Maximum Sentence	Average Length of Term Served		Average Length of Maximum Sentence	Average Length of Term Served	
Total.....	6.28	1.96	31.2	3.82	1.20	31.4
Homicide	18.10	4.98	27.4	13.68	3.14	22.9
Rape	9.96	2.83	28.5	—	—	—
Robbery	12.08	3.24	26.9	9.39	1.96	20.9
Assault	5.53	1.89	34.2	2.76	1.10	40.0
Burglary	7.24	2.08	28.7	4.80	1.76	36.6
Forgery	7.01	1.78	18.3	6.52	1.48	22.7
Embezzlement	4.93	1.38	28.0	—	1.27	—
Fraud	3.91	1.48	37.8	—	1.40	—
Possession of stolen prop- erty	3.33	1.41	42.3	—	0.88	—
Larceny	5.35	1.70	31.8	3.67	1.27	34.6
Sex offenses, except rape...	5.74	1.91	33.3	2.92	1.38	47.3
Violation of liquor laws....	1.69	0.89	52.7	0.71	0.40	56.3
Violation of drug laws.....	2.07	1.37	66.2	1.63	0.99	60.7
Carrying weapons	2.79	1.35	48.4	—	0.48	—
Nonsupport or neglect of family	2.19	0.99	45.2	—	1.03	—
Other	3.89	1.42	36.5	2.53	0.98	38.7
Not reported	3.97	1.57	39.9	1.41	0.77	54.6

Actual time served in prisons and reformatories for different offenses ranges from one year to five, though seldom beyond three. The ratio between average length of maximum sentence and average length of time served ranges from one-sixth to two-thirds, usually from one-fourth to one-half. The higher the ratio the more of the prison term is likely to be served, and the lower the ratio the less of the prison term. The ratio among the several offenses is in order (from higher ratio to lower) as follows: violation of drug laws, violation of liquor laws, carry-

ing weapons, nonsupport of family, possession of stolen property, fraud, assault, sex offenses (not rape), larceny, burglary, rape, embezzlement, homicide, robbery, and forgery. With females, the ratio is in the following order: violation of drug laws, violation of liquor laws, sex offenses, assault, burglary, larceny, homicide, forgery, and robbery. With both sexes, the more serious offenses, both as to the person and as to property for gain, are likely to have but a relatively small part of their sentences actually served.

In the following table is given the percentage distribution of prisoners leaving prisons and reformatories according to length of sentence imposed in contrast to length of time actually served (1923).

PERCENTAGE DISTRIBUTION OF PRISONERS LEAVING PRISONS AND REFORMATORIES BY LENGTH OF SENTENCE AND TIME SERVED

Time Involved	Per Cent Distribution	
	Length of Sentence	Time Served
Total.....	100.0	100.0
5 years and over.....	47.4	5.4
Life	1.5	—
Maximum not fixed.....	0.6	—
10 years or over.....	23.0	1.3
5 to 9 years.....	21.6	4.2
2 to 4 years.....	31.3	21.6
4 years	3.6	2.4
3 years	11.8	5.9
2 years	15.9	13.3
1 year	17.4	46.2
Less than 1 year.....	2.5	26.6
9 to 11 months.....	—	13.0
6 to 8 months.....	—	7.9
3 to 5 months.....	—	4.1
Less than 3 months.....	—	1.6
Minority	0.2	—
Unknown	1.2	0.2

Again there is found the great difference between the length of sentence imposed for prisons and reformatories and the actual time spent in these institutions. Though almost one-half (47.4 per cent) of sentences are for five years or more, only 5.4 per cent of prisoners in fact serve that long a time—a proportion of less than one-ninth. The difference is greater still as to those having a sentence of ten or more years. Here the proportion

for length of sentence is 23.6 per cent, and for time served 1.3 per cent—a proportion for the latter less than one-eighteenth of that for the former. The respective percentages for the period from five to nine years are 21.6 and 4.2; for the period of four years, 3.6 and 2.4; and for the period of three years, 11.8 and 5.9. At the period of two years the proportions come nearest being equal. With the shorter sentences there is the greater likelihood of full time being served.

In Missouri the average length of sentence is found to be 50 months, but the average actual time served 11.5 months. Life sentences average 10.9 years. Of prisoners sentenced for 2 years, 76 per cent are released within 13 months.¹ In other investigations similar results appear.

In the following table is given the percentage distribution of prisoners leaving jails and workhouses according to length of sentence in contrast to actual length of time served (1923).

PERCENTAGE DISTRIBUTION OF PRISONERS LEAVING JAILS AND WORKHOUSES BY
LENGTH OF SENTENCE AND TIME SERVED

Time Involved	Per Cent Distribution	
	Length of Sentence	Length of Time Served
Total.....	100.0	100.0
1 year or over.....	3.6	1.2
1 to 11 months.....	49.7	31.4
9 to 11 months.....	0.7	1.2
6 to 8 months.....	5.3	1.9
3 to 5 months.....	10.1	7.5
2 months	7.9	6.4
1 month	25.7	14.4
Less than 1 month.....	46.7	67.4
20 to 29 days.....	8.1	11.4
10 to 19 days.....	21.8	17.3
5 to 9 days.....	8.2	11.8
Less than 5 days.....	8.6	26.9

Of those with a sentence of one year or over (3.6 per cent) less than one-half (1.2 per cent) serve out that time. One-half (49.7 per cent) of the entire number have sentences of from one to eleven months, but less than one-third (31.4 per cent) are confined for their full sentence. Of those sentenced for one month (25.7 per cent) only a little over one-half (14.4 per cent) serve such time. Generally when sentences are short, especially

¹ Missouri Association for Criminal Justice, Missouri Crime Survey, 1926.

when they are under one month, full time is the more likely to be served.

Further evidence of the considerable disparity between the prison sentence and the actual time served in prison by prisoners is found in later tables.¹ Of prisoners in prisons and reformatories in the United States, only about one-third (33.4 per cent) are released in consequence of expiration of sentence—which means that only this proportion actually serve out their sentences. The proportions vary greatly in different parts of the country. (A particular reason for this reduced figure for those who finish out their terms in prison is the large percentage paroled, which is over one-half.) Of prisoners under definite sentence a little over three-fifths (61.9 per cent) leave by reason of expiration of sentence, or serve out full time. (One-fourth are paroled.) Of those under indeterminate sentence only one-sixth (13.1 per cent) complete their sentences. (Over three-fourths are paroled.) It also appears that the longer the sentence, the less likelihood there is of the full sentence being served out.

Of prisoners in jails and workhouses three-fifths (57.8 per cent) are released by reason of expiration of sentence (one-fifth leaving through payment of fine). When sentences are short, there is much greater likelihood of their being served out. The serving of full time is least likely in connection with payment of fine.

¹ See pp. 416, 420, 425, 431.

PART VII

MEANS OF RELEASE FROM PRISON

CHAPTER XLIV

GENERAL MEANS OF RELEASE FROM PENAL INSTITUTIONS

There are several different means by which the prisoner in prison may receive his liberty and be enabled to leave his prison house. Expiration of sentence naturally constitutes the foremost means, the prison now no longer having claim or hold upon him. Release may, as we have seen, be expedited or anticipated by "good time" rules or like regulations, which serve to reduce the actual time of imprisonment. This is often linked up with the indeterminate sentence.¹

Pardon or the extension of clemency on the part of the Chief Executive of the State is a recourse, theoretically reserved for emergencies, but employed in various special circumstances. This pardon may be full or qualified, or conditional. (Like power may in form be vested in the Chief Executive in the commutation of sentence, or its change from a more severe to a less severe type.)

Related to pardon, but really of the nature of conditional release, is parole, which authorizes the departure of a prisoner from prison, but has him to remain under official surveillance for a greater or less period after his departure. Another means by which a prisoner may leave prison through State action is his transfer for cause to some other institution, especially a non-penal institution. In the case of imprisonment for nonpayment of fine, particularly in a jail or workhouse, confinement may always be ended by the payment of the fine in question.

A means of release from prison occasionally availed of, but not with the sanction or permission of the law, is self-liberation on the part of the prisoner, or escape. Here the prisoner stands not upon the order of his going, but takes action into his own hands. With prisoners in general there is an ever rankling discontent and rebelliousness over their confinement behind bars—

¹Primarily as a means of reducing the population in prison, and with less reference to the matter of release as such, there might in some instances be removed from it the very old, the infirm, and the incurably ill, as well as some psychopathic cases.

a constant straining at the leash, an ever present urge to be away and free. With some there may be a desire for old haunts and old ways, possibly of a criminal nature. With juvenile delinquents the yearning for escape may be due largely to homesickness for former scenes or to a love for adventure, though sometimes with them too there may be involved more reprehensible inclinations.

There is one further means of release from prison, the final great deliverance when all else has failed—death.

CHAPTER XLV

PARDON

REASONS FOR EXISTENCE OF PARDONING POWER

From earliest American criminal procedure, taken from like English procedure, there has been vested in the Governor of a State the power to pardon a person convicted of crime. This was originally intended as an emergency resort—a final means to undo any possible miscarriage of justice or to secure right or justice under particular circumstances. To a pardon it is possible that conditions may be attached—there thus being created a conditional pardon, which is more in keeping with the principles of parole. The Governor usually also has power to reprieve, or to postpone the carrying out of a given penalty.

The reasons that are now actually advanced for the exercise of Executive clemency are many. The most frequent are desire to secure justice or the rectification of injustice, especially as relates to the conduct of the original criminal proceedings against the prisoner, or because of mistake of law or of fact, or because of mitigating circumstances, or because of infliction of too severe a sentence; advanced age of prisoner; serious illness of prisoner (it often being the custom to pardon one afflicted with an incurable disease such as tuberculosis); need of family of prisoner for his support; meritorious service or conduct for a certain period on the part of the prisoner; infliction already of sufficient punishment upon prisoner; adequate reformation of prisoner, and consequently absence of further need of imprisonment; obnoxious prison conditions with pardoning as the only means of relief; etc. A pardon may sometimes be necessary to restore citizenship to one who has been imprisoned.

INCREASING RESTRICTIONS UPON PARDONING POWER

For long the policy of pardoning offenders in the discretion of the Governor of the State was but little challenged. Of recent years, however, this has undergone serious questioning. Executive

clemency in the matter of pardoning has been felt to be exercised too frequently, from inadequate knowledge of a given situation, without sufficient safeguards, or for reasons that have been considered weak or flimsy. Now and then the public has been greatly disturbed at some manifest abuse of the pardoning power or at what has been regarded as wholesale pardoning.

Criticism has at the same time been evoked on different grounds. Objection is made that a Governor is hardly in position to determine the matter of pardon to the best advantage, and that it is not fair to him to impose this additional burden upon his shoulders. It is felt that he is being given a peculiar task for which he has no special fitness, and which takes him from other and much more important duties concerned with the administration of the affairs of the Commonwealth.

In the exercise of the pardoning power by the Governor, furthermore, there is possibility of the entrance of politics or of other undue influence of some kind, all detrimental to justice and the public welfare. The vesting of the power in the Governor as a sort of ultimate court of review and determination cannot help being of weight with trial courts and juries. It is a temptation at times to shift the final responsibility to the Governor, with the consequent neglect to some extent of their own duties. Popular confidence in courts may tend to be undermined as a result.

The thought and energies of the prisoner, finally, are directed toward securing Executive favor, perhaps with interference with prison discipline and with the real welfare of the prisoner. Pardoning also has little constructive value for the prisoner. It is without the reformatory or helpful influences that are found in other forms of discharge of an offender from prison, particularly parole.

In consequence of this changing attitude, there is at present far less exercise of the pardoning power than formerly. Towards the middle of the nineteenth century about one-fourth of all discharges from prison were the result of action on the part of the Executive. To-day only 3.5 per cent (as respects prisons and reformatories) are thus ascribable. Of later times also there has been much more care and circumspection on the part of the Governor, as well as public watchfulness, in the matter than was once the case.

Another sign of advance in connection with the pardoning power is the legal requirement that the Governor make a formal statement as to the pardons issued by him, including in par-

ticular the reasons for this action. Some such statement is now required by the majority of States.

PRESENT PROCEDURE AS TO PARDONS

Present procedure as to pardons varies among different States. In over one-half the power of the Governor in the matter is complete, though in some of these there is a special advisory board.¹ In about one-third the pardoning power is shared by the Governor with a special board or council. In most States there is thus some sort of agency or board concerned with the matter of pardons besides the Governor. The personnel of the special board varies in different States, though, for the most part, it is composed of State officers. In a few cases the parole board is vested with power. The special board may conduct hearings and call witnesses before advising action. In some States hearings are required before action is taken, perhaps with prior notice thereof. (In most States action on behalf of a prisoner may be taken by an attorney.)

DESIRABLE POLICY AS TO PARDONS

Possibly full power in the matter should not be taken from the Governor; he should retain some voice and some authority in any final determination. A special pardoning board is perhaps the best plan. It should at least have power to recommend, and there should be full explanation when its recommendations are denied. It should be able to investigate all requests for pardon, and to conduct hearings when necessary, at which the prosecuting officials and others concerned with the original trial have the right to be heard. It should also have power to follow up cases of pardon to some extent.

The system of pardoning should, sometimes at least, have some connection with other, and more constructive, processes of penal treatment—with the indeterminate sentence or with the parole system. In considerable part eventually it should give way to some other system. For certain cases, however, power of pardon should always be possible, having alone the efficacy to absolve completely a person to whom a given crime has been wrongly imputed.

The pardoning power should not be abandoned—at least not

¹The first special board seems to have been introduced in Minnesota in 1857.

for the present—but its exercise should be carefully restricted. It should retain some of its ancient import—to be held in reserve in case of miscarriage of justice or to meet some extraordinary situation. It should be saved for emergency.

CHAPTER XLVI

PAROLE

THEORY OF PAROLE

Parole is the release upon condition of an offender from direct confinement within prison walls. It allows him to pass and remain outside, but under the supervision of the prison or of the parole authorities, and subject to their direction or orders. It includes power on their part to have him returned to prison in case of renewed offending or of violation of the provisions of parole. While on parole the offender is at restricted liberty—free in many respects, but always under the state's surveillance. His prison term is not definitely ended; it may continue till actual discharge from parole. Wrongful conduct causes termination of parole, and return to prison.

With parole there is given the man who has been behind bars the chance to show outside that he is no longer in need of this form of restraint. Before being eligible for it a prisoner must prove his fitness for release, including among other considerations good behavior while in prison. The measure cuts short his stay in prison, and allows premature departure. His own interests are directly appealed to; in his own hands is placed to a considerable extent the determination of the place where he is to be. The procedure at the same time permits the state to retain its hold over him and to exercise control over him, but by non-institutional means. It helps the state to decide whether he should remain under confinement, or whether he has become suited for return to the world.

Parole is connected in greater or less degree or bears a greater or less resemblance to other features of penal procedure in the treatment of offenders. It is closely linked up with the "good time" regulations of the prison, which allow a prisoner's time to be reduced or commuted in consequence of good behavior. Such regulations are, however, rather a disciplinary measure; they are by no means the sole, or necessarily the governing, factor in the matter of parole.

Parole may have more or less connection with the indeterminate sentence—or perhaps the two may rather be said to be often in coördination, or to supplement each other. Both have a part in reducing the actual time to be served in prison. Both appeal to the prisoner's desire for release on good behavior. One, however, constitutes a means of release, with subsequent treatment; the other has to do with the time of release, whether earlier or later. With the indeterminate sentence, furthermore, the discharge, when it comes, is complete and unconditional, and without supervision.

Parole is similar to probation¹ except in one important particular. Parole requires the serving of a certain period of time in prison before it operates, or some preliminary institutional treatment; while probation involves no commitment behind prison bars at all. Parole has been called probation deferred. Parole, moreover, is in the hands of an administrative body; probation is rather a function of the court. (The term "parole" is sometimes used for release by a court—"bench parole.")

Parole is like pardon in that it permits a convict to pass from prison walls into the open world outside. It differs from pardon in that under it a convict is not, as under pardon, a free man. Under parole the state still holds a restraining hand upon the man it has released from prison. In a sense, he remains still in its custody. Pardon may exculpate one of wrongdoing; parole does not—though it may recognize mitigating circumstances. Pardon may be an act of mercy; parole is largely a system of discipline, in which reformatory possibilities have full consideration.

Parole is more to be likened to conditional pardon—though it remains without reference to any possible absolving from guilt, and involves subsequent attention.

Parole has a certain resemblance to the "honor" system in prisons, but is something far wider, allowing definite release from prison.

Parole, though arising independently, is also not without a measure of correspondence to the follow-up procedure in increasing use in non-penal organizations, especially certain social welfare agencies, as hospitals (including hospitals for the insane), charitable societies, and the like—a form of social service to be extended to one who has once undergone treatment necessary and appropriate for his case, and who requires further observation, to prevent a relapse, or to insure a full recovery.

¹The matter of probation is considered in Chapter LIV.

It involves a measure of guidance and direction till there has been some degree of readjustment to ordinary life, or till one has gotten on his feet. It affords both protection to the person paroled and valuable clinical information to the agency having charge of the matter. It represents essentially individuality of treatment, or, in even more modern terms, social case work.

Parole, moreover, may be conceived of as having several different aspects, though all rather exist in combination. It may be looked upon as a reward for good conduct, a disciplinary measure within the prison of great value. It may be held as a form of correctional treatment for which imprisonment has been rather the preparation. It may be regarded as indicating that the prisoner has reached a stage when further imprisonment is of less service as a means of reformation than is parole outside. It may be considered as a form of continuing punishment, carried on outside prison walls instead of within. It may be thought of as a means for discovering one's fitness for discharge from custodial confinement. Finally, it may be conceived of as a transitional stage from the life of the prison to the normal life of the world outside, or in the community at large. It is this last named conception in which there lies the greatest significance. Rightly developed and promoted, parole should become something much more than a negative form of treatment of the offender. It should have positive constructive values in guidance and rehabilitation.

ADVANTAGES OF PAROLE

The advantages of parole are several. Apart from the rôle it plays in permitting individualization in the study of the offender, the most immediate gain consists in the powerful aid to discipline which it constitutes. Appealing with unique force to the prisoner's desire for release, and enlisting in greater or less degree his good will and coöperation, it is of supreme value to the prison authorities in their task of management.

Through parole it may be possible for the general morale of the offender to be considerably improved, both before and after release. From different angles there may be benefit. New conceptions and new attitudes may be created or developed. Once placed amid helpful influences, and with concern in his following the right path, it may prove much easier for his feet to remain therein. An additional good effect may possibly be that one who benefits by parole may come to have a certain sense of

gratitude in being released ahead of his time; whereas a prisoner who is compelled to serve full time may on his discharge feel that he has then paid in full and has squared his accounts, and may be the more inclined to get even with society, and the more ready to resume a criminal career. By earlier release, also, the prisoner is spared further possible contaminating effects of prison life. Parole may in general provide an environment more conducive to good conduct.

A very important aspect of parole, in connection with the indeterminate sentence, is that some persons will be found unfitted for it, and may thus be kept under permanent custody. A further consideration is that those found after a trial period of parole to be unworthy of it and unsuited for life outside of prison may be returned with little delay, and with little formal court procedure. A special virtue of the system is that, inasmuch as most offenders who have been in prison are eventually to be returned to society, it is far better to apply to them some reformatory or disciplinary measure in the process.

Great advantage may accrue to the state through parole from the circumstance that it constitutes a much less costly system than that involved in the upkeep of prisons. The present per capita cost of prisoners in prison is approximately \$330 (1926). A good parole system should be possible for not more than half this sum, perhaps for considerably less than half, perhaps for only a relatively small percentage.¹ But the matter of difference in costs in the two systems must not be carried too far. A really effective system of parole is bound to be expensive.

An additional gain to the community lies in the fact that the offender, when engaged at labor during his parole, is in some position to provide for the support of his family or to contribute to the needs of his dependents. There is, furthermore, increment to the general working and productive forces of society.

Parole may, all in all, prove of such decided advantage with respect to the release of the prisoner that it may in the course of time largely supersede pardon—except in those cases where pardon retains its old implications of freeing one from the original charge of crime, or in other peculiar circumstances, or in an emergency. The parole system may in the end serve greatly to reduce the actual prison population. It may conceivably come to be a substitute to a great extent for the cells

¹ The present annual per capita cost of parole seems to range from \$1 to \$50, and occasionally to \$100, with possibly from \$20 to \$40 as the average.

and walls of the prison house. Possibly in time only those will be left therein or will have more than a temporary sojourn therein, who would fare ill outside or who might constitute a continuing danger to society. Parole has vast possibilities.

GENERAL PRINCIPLES OF PAROLE

The system of parole is not to be looked upon as a simple and easy undertaking. It constitutes in fact one of the most drastic, far-reaching, and momentous ventures in criminal procedure. Its operations, if they are to be attended with any degree of effectiveness, and not with distinct failure, are to be planned and conducted with the greatest consideration and with the utmost intelligence. Unless carefully safeguarded, it is liable to do much harm. Absolute essentials for the success of the system are proper administration, which includes careful and thorough preliminary investigation before the granting of parole, and adequate and competent supervision after its granting.

The penal institution most suitable for the operations of parole is the reformatory. It may also be utilized to a considerable extent with prisons proper. It is less fitted for local institutions, such as jails and workhouses, with their relatively brief sentences, but it may sometimes be availed of even here. It is often especially desirable in connection with institutions for juvenile delinquents.

The parole system is naturally more in harmony with the indeterminate sentence than with the definite sentence; and it is usually regarded as an accessory or adjunct of the former. But it may be no less effectively employed with the definite sentence; its advantages may apply to one as to the other. The entire matter, affected as it is by considerations of future good behavior on the part of the offender, may have even broader implications. When the sentenced prisoner is once permitted to leave his prison before his full time or his formal time is up, or when there is once exercised some degree of surveillance over his conduct outside, it need be no great step to the continuance of the interest of the state in all such. This might be in the exercise of a certain measure of attention to or observation of prisoners departing generally from their prison, for a greater or less length of time, at least in the way of occasional periodical report, or of a statement as to whereabouts or activities, all constituting an effort to keep in touch with them, or to maintain a sort of quasi-parole as to them. The plan might be regarded

as no less for the good of the ex-prisoner. This aspect of parole has received little consideration as yet; and there are formidable objections to it, some on constitutional grounds (especially as to infringement upon one's liberty), and with respect to its practicability and feasibility. But under a wide conception of the bearings of parole, it may be entitled to serious attention.

PRELIMINARY IMPRISONMENT

In general a prisoner is not to be regarded as eligible for parole until he has already served out a certain part of his sentence, or has been under prison restraint for a minimum time. This period, if not fixed in the original sentence, may be indefinite or left to the discretion of the prison or parole authorities. Some period of time is necessary, not so much or merely by way of "punishment," but for the opportunity for the study of the prisoner, and for the realization in him of some measure of discipline. Reduced time in prison made possible by parole may be affected in greater or less degree by "good time" regulations.

PERIOD OF PAROLE

The actual length of time that parole is to last may often well be left without definite limits, though always within reasonable bounds, and with much depending upon the circumstances of individual cases. Too long a period would in general entail considerable expense and trouble, while it might also defeat the very purposes of the arrangement, indicating as it might the existence of doubt as to one's ever being fitted for complete liberty. In some cases, however, it might well be for life. Too short a period, on the other hand, would permit but limited operation of the helpful influences which are supposed to attend and safeguard the system; nor would it adequately disclose results or tendencies as to whether the plan were turning out well. The period should be of sufficient duration to permit the determination of the general bearings and results of the arrangement. The term may to a large extent be fixed by, or left to, the discretion of, the parole authorities.

As a rule parole should formally extend at least to the maximum limit of the original sentence, even though actual supervision may not be required for all this time. One may be absolved from making regular report through all of the period, but he continues under some measure of parole none the less. In

some cases it may be well to have parole continue indefinitely or as long as may appear advisable or necessary. For the most part the actual time of parole need not exceed a few years, often not more than a year or two. If several or a number of years are prescribed, the periodical reporting which is required of the person on parole may become of decreasing frequency after the first year, toward the last being only annually or semi-annually. For juvenile delinquents parole may in general continue through minority; in some cases it should be maintained to an even later time.

Whatever the length of parole, if it turns out well, at its expiration the parolee is given a formal and complete discharge, and becomes really free.

QUALIFICATIONS FOR PAROLE

In determining parole for individual cases full study is to be given to the matter of general fitness for it and for the life outside prison, including careful investigation both as to past condition and experiences (both in the State and out) and as to future probabilities. To be subject to parole, the prisoner must, at the outset, have a virtually perfect prison record, or have been in the first grade, for a certain time previously, as half a year, a year, or longer. Good behavior in prison, however, should be far from being the sole criterion for justifying parole. Sometimes hardened offenders know well how to deport themselves with all circumspection for a time.

Interest and activity in education may be made a particular prerequisite with respect to those prisoners having this in limited measure. Such prisoners must show themselves to have profited by their schooling, or to have taken advantage of their educational opportunities, possibly with proof of satisfactory progress. Stress, however, should not be placed upon this phase of the matter at the expense of or to the neglect of other important considerations. Vocational attitudes and preparation while in prison should be afforded like regard if adequate facilities are provided.

Attention is also to be directed to such factors as age of prisoner (including extreme youth or advanced age), physical and mental condition (including general health, freedom from disease, and possible tendencies), and the like. In some cases home demands or family needs are to have weight. Finally, there must not escape consideration such matters as a sense of remorse

on the part of the prisoner, or any possible injustice toward him or lack of blameworthiness in him in the original criminal proceedings.

If the prisoner is at all capable of employment, and if it is at all possible—perhaps in all events—he must have a job awaiting him on his departure from prison, or be assured of employment, and not be likely to drift into dependence or vagrancy. It must be seen that future surroundings and associations will be such as to forestall likelihood of relapse into criminal ways. Note must be taken of probable means of recreation, amusement, and indulgences. Possibly an entirely new environment may have to be chosen for the man about to leave prison. Guard must also be taken that release will not endanger the community at large. (Possibly in some circumstances the parolee should make greater or less restitution for losses incurred through his wrongdoing.) In general a prisoner allowed parole should have at hand a little ready cash.

PRISONERS SUBJECT TO PAROLE

Not all prisoners may be subject to parole. One class in particular that may be regarded as unsuited for parole is repeaters or confirmed criminals. Their very return to prison is sufficient evidence that they are little likely to be amenable to the influences of parole, and that custodial confinement is the only policy as to them. Persons guilty of specially heinous crimes or possessed of apparently deep-seated viciousness may often likewise be denied parole—partly because of the dangerous character of the criminal, and partly because of possible public resentment at such a course. The nature of the offense, however, is not to receive too great emphasis; it may call up the old conceptions of retributive punishment or punishment befitting the offense, and is not fully in keeping with the aims and principles of parole. In many cases much will depend upon particular circumstances. With a crime like homicide, for instance, an important consideration is whether it was the result of overmastering impulse or involved no general depravity on the part of the offender. Mentally defective or abnormal persons are not to be paroled; if possible, they are to be confined in an institution of different character. (The prisoner may of course decline parole if he so chooses.)

Parole is to be allowed only for the right persons. Otherwise the system is discredited, and public confidence lost.

ADMINISTRATION OF PAROLE

Administration of parole may be in the hands of several different agencies—the authorities in control of the penal institution concerned, the officials of this institution, the general State agency dealing with pardons (if one exists), some general State welfare agency (perhaps with a special division on the subject), or a special agency created for the purpose. A desirable arrangement might possibly be a body composed of a small number of members, including both certain public officials and private citizens, all representing various phases of the matter. If not directly included, there should be in close touch prison officials, psychiatrists, social workers, etc. The Governor is as a rule to have little to do with the matter, except in unusual circumstances or in an emergency, or by way of final appeal. The parole body should as far as possible be composed of experts.

The parole body should be in frequent, possibly continuous, session. It should be able to dispose of all cases before it without undue delay. Full information, with ample opportunity for investigations and hearings, should be secured before decisions in individual cases are arrived at. The parole body should have rather wide powers, including power to summon witnesses, etc. Committing judges and prosecuting officials, as well as private citizens, should have a right to voice approval or disapproval of contemplated action. Reports should be made by all having to do with the prisoner while in prison—warden or subordinates, psychiatrist, physician, teacher, superintendent of prison industries, and any outside parties that may be concerned. The services of citizens might perhaps be availed of to a considerable extent in passing upon the merits of individual cases, with due recommendations. Reasons for allowing parole should be set forth. Determinations are to be subject to later modification if found desirable. All is to be done without political or other undue influences.

For the conduct of parole certain general rules may be laid down, the chief ones relating to employment, home life, and means of recreation. Change of employment or leaving of jurisdiction may be only with permission. Material violation means immediate return to prison. Should a new offense have been committed, not only may it receive due punishment, but the remainder of the old sentence may be required to be served out.

In some cases, if deemed best, juvenile delinquents may be

removed from an institution and placed under some other form of control, perhaps some private agency. Certain children may be sent to private homes, under regular child placing principles. Possibly the juvenile court originally concerned may exercise some degree of supervision throughout.

PAROLE OFFICERS

To see that the regulations or provisions of parole are carried out, or lived up to, there should be an adequate staff of parole officers, perhaps under a chief or head parole officer. This should be composed of persons having much the same qualifications as probation officers. In the case of parole and probation in connection with local penal institutions, the same officers could well serve for both purposes. They should be specially trained, and should be of civilian rather than of police character. As far as possible, they should be on full time, having no other duties. The parole officer should not have too great a number of parolees in his charge, not over 75, and preferably about 50, much depending upon the size of the territory to be covered. Besides due periodical reporting of parolees, there should be visitation with them from time to time, to insure personal knowledge on the part of the parole officer with regard to the operations of parole. The parole officer should be in constant touch with persons and agencies with whom the parolee has contact. A particular task will often be the finding of a job for the parolee. Greater supervision will be necessary for younger and for unmarried offenders. Special attention will be required during the first few months of parole, the most critical period of all. Private or volunteer workers, perhaps friends of the parolee, may not infrequently be used to advantage in the work, but always under the general direction of the parole officer. The parole staff should contain both trained investigators and trained supervisors.

DEVELOPMENT OF PAROLE IN THE UNITED STATES

Parole has been sporadically employed in the United States from the early decades of the nineteenth century.¹ It had its beginnings in several eastern States when agents were appointed to look after persons discharged from custodial institutions, especially in the case of juvenile delinquents during their minority,

¹ The origin of the system of parole was in Europe, especially under the name of conditional release.

a particular object being to prevent their abuse while under indenture. Such work was at first largely of a private character. The work has been set forward in later times by the concern in the well-being of ex-prisoners on the part of different private agencies.

Parole, as a form of conditional release, and as a formal public measure, was introduced in New York in 1876 in connection with the indeterminate sentence. It is now in use to a greater or less extent in practically all the States—with virtually all reformatories, and with an increasing number of prisons. Parole preceded the indeterminate sentence, but in considerable measure the two may be said to have moved forward hand in hand. To-day parole is found to a slightly greater extent than the indeterminate sentence. In a few States the former exists without the latter.

Parole is for the most part confined to State penal institutions. In the smaller number of the States it is permitted also in local institutions.

PRESENT REGULATIONS AND PRACTICES AS TO PAROLE

Under present parole regulations a prisoner must in general have served a minimum sentence before becoming eligible to parole.¹ In some States parole, at the expiration of the minimum sentence, especially if there has been previous good behavior, is optional with the parole authorities; in a few it is rather compulsory at such time. In a number of States a certain proportionate part of the sentence, whether definite or indeterminate, is required to have been served, as one-third, one-half, or three-fourths. In certain cases no minimum time is necessary before parole may be obtained, parole being possible at any time for particular individuals—there here being a real indeterminate sentence. In some instances where sentence is very long, a certain number of years must be served first, as five or six. Life prisoners when eligible to parole must in general have served a specified number of years, varying from seven to five times as many. In some States parole is allowed only with the indeterminate sentence; in others, with the definite also. The time within which

¹On the general workings of parole, see in particular Report of Pennsylvania State Parole Commission, 1927; reports of Prison Association of New York; reports of New York State Crime Commission; Illinois Association for Criminal Justice, Crime Survey of Illinois; and similar reports. See also *Journal of American Institute of Criminal Law and Criminology*, Aug., 1923, Nov., May, 1927, May, 1928.

parole may be availed of may be especially brief with reform schools. Delinquent children are eligible to parole at practically any time after commitment.

Not all States specify the length of parole. In the larger number, at least in theory, parole continues till the expiration of the full or maximum sentence, sometimes considerable discretion in the matter of actual discharge being left to the parole authorities. In practice parole is for a limited period, usually one year, though in some cases the time may be only six months, and in others two years, or perhaps four or five years. In a few cases parole is of indefinite duration, lasting through life if deemed advisable. When discharge comes, after a period of good behavior, it is in general final.

In the granting of parole the first consideration as a rule is the prior bearing of the prisoner while in prison. The nature of the original offense also usually receives attention, in some cases much attention. In general parole is afforded least often with respect to offenses against the person and violation of liquor and drug laws. It is afforded most often with respect to offenses against children and one's family, offenses against property for gain (except fraud), certain offenses as to sex, and offenses against public health or safety, public peace or order, and public policy or morals. These offenses are largely the ones to which the indeterminate sentence is made to apply most frequently.¹ In a number of States parole is denied to those charged with the graver offenses, especially murder. In some it may not be extended to life prisoners. To past criminal record weight is likewise attached, it being the policy with some parole authorities to allow no release for what are regarded as confirmed criminals, or for second or third offenders. Other influential factors are age of prisoner, physical or mental condition, home demands, assurance of employment, and the like. In addition, attention is now and then directed to such considerations as possible wrongful trial or wrongful imprisonment, absence of criminal intent on part of the prisoner, discovery of new evidence in a given case, use of prisoner as a tool in wrongdoing concerned, sufficiency of punishment, repentance of prisoner, and similar matters. Some of these considerations are very much on the order of those actuating the granting of pardons.

As with pardons also, an occasional unfortunate practice in the allowing of parole consists in the overcrowded condition of the penal institution, making necessary for its relief a reduction

¹ See pp. 362, 363, 421, 422.

in the number under confinement, which is accomplished through parole.

On the whole, comparatively little consideration is afforded to the actual fitness for discharge of the prisoner through his moral improvement or through his educational or industrial or vocational preparation for life outside prison walls. This failure is doubtless to some extent ascribable to the circumstance that under present conditions such improvement or preparation cannot in general be expected. With a number of penal institutions, however, release is possible only after due utilization of facilities for schooling.

In the larger number of States there is vested authority for parole in an existing State agency, perhaps an agency composed of representatives from already existing agencies, in some cases State officials. In the smaller number a special independent body is created to have charge of the matter, though possibly only with power to recommend, final authority perhaps resting with the Governor. In about one-half of the States the Governor has some power in the proceedings, usually in connection with other State officials or agencies. In not a few States procedure as to parole is equivalent to or little different from that as to pardon. In a certain number the matter is placed in the hands of the administrative board in charge of the penal institution, while in some others such board has considerable power in the way of recommendation. Seldom is full authority given to the penal institution alone. When parole is authorized for local jails and workhouses, it is most often in the hands of the court. In certain States where parole is not provided for by law, conditional pardon may at times be availed of as a substitute.

In perhaps a little less than half the States, before decision as to parole is made, notice of the intended action must be conveyed to the prosecuting official or to the court concerned in the original trial, with opportunity for their dissent if advisable. Sometimes also statements as to their views upon the matter are required—though such statements are usually of but limited value, being often of but perfunctory nature. In some cases public notice of contemplated procedure is obligatory upon the parole authorities. There is increasing coöperation with courts with respect to the records of offenders.

In some States there are a few general rules set down for the conduct of parole, but in most cases rules are adopted by the parole authorities as they deem best. In the smaller number of States formal reports are required as to parolees, possibly with

wide details. As a usual thing, persons placed on parole are to report immediately after release from prison, and periodically thereafter, perhaps once a month, and less frequently after the first year. Questions may be set forth for answer, though results are of varying degrees of practical value, often needing to be checked.

Requirements of those on parole vary not a little as between different States. In some there are specific precepts as to the conduct or behavior of the parolee; in others there are elaborate or detailed rules. In nearly all cases the man on parole is required to have good associations, when released, and in some good amusements as well. In most cases he must abstain from intoxicants; must remain in the State; must not change his residence without permission. In almost all of the States there must be assurance of employment when outside prison. In some States it is required that the parolee have a suitable home, or that he be not dependent upon the community. In a number of States it must be felt safe to have him out of prison. In a few cases some sort of bond may be necessary to cover the expenses of a return to prison in case of violation of parole. Relatively seldom is it seen to that the paroled man on leaving prison is supplied with any funds.

Violation of parole may consist of one of several things: violation of the rules or regulations specified; failure to make report as required; falling into criminal ways; direct violation of the law; new imprisonment; etc. The matter is somewhat affected by the length of time involved in the parole.

On violation of parole the parolee may generally be returned to prison and required to serve out the balance of his sentence. This is more or less definitely implied in the statutes of about half of the States. In a smaller number it is expressly set forth that the time on parole is not to be deducted from the full sentence. In certain States the matter is largely left to the discretion of the parole authorities.

In the larger number of States rearrest after violation of parole is effected upon a written order of the parole officer. In other States special orders are necessary from the Governor or prison warden. Usually little provision is made for the hearing of the case for the benefit of the parolee.

Adequate facilities for the securing of information as to the possible fitness for parole of those applying for it are possessed in but few States. In most instances a report, especially as to the legal aspects of the case, may be requested of the prosecuting

officer or the court concerned. Beyond this but little is ever done in the way of investigation. The principles of social case history have as yet hardly had application. In but a limited number of cases is there afforded psychiatric examination.

Due facilities for supervision of parole work are largely lacking, anything like adequate equipment for it being found in but few States, even when required by law. Parole officers are provided for in hardly over half of the States; in these provisions are seldom full or definite.

The number of parolees to a single parole officer varies much in different areas. Only in a few States is the number limited to 50 or 75 under the charge of one officer. In most, however, the number does not exceed 100. In certain States the number is several hundred. In a small number of States there are no geographical limits at all to the territory of a parole officer. In some States there is but one officer for the entire State. In other States with formal statutory provision there are no parole officers at all. Not a great number of parole officers are adequately trained.

Often a parole officer is on but part-time duty, having other tasks in addition. In fact as yet most officers are little more than clerks, with their work often of a perfunctory character, perhaps doing little more than keeping record. They are as a general thing in but restricted touch with those in their charge. Actual constructive work accomplished is limited. Visitation at the home of a parolee is seldom practiced. Not infrequently the most important "field" work of the officer is the effort to secure a job for the man on parole. In certain cases a parole officer may have other classes besides ex-prisoners to look after, especially the insane. In a few States parole is for the most part under the supervision of some religious or philanthropic organization, operating with the authorization of the State. In other States private agencies are availed of to assist in the work in greater or less measure. In certain States special friends or "sponsors" of the parolee may be appointed to help in his supervision.

In too many instances parole is found to continue for too brief a period.

PROPORTION OF IMPRISONED OFFENDERS GRANTED PAROLE

The proportion of prisoners who are released on parole varies greatly with different penal institutions. The proportion for reformatories is always greater than for prisons. In some cases

the parole authorities proceed with much caution in granting parole; in other cases they are much more liberal in their attitude. The policy as to a given institution often depends in some measure upon the length of the minimum sentence involved. In a few instances nearly all are paroled who have fulfilled their time requirements and have a good prison record for a given period. In a few instances, on the other hand, practically all initial applications are refused.

The proportion granted parole of those eligible for it in general ranges all the way from one-tenth, one-fifth, or one-fourth to two-thirds, three-fourths, or nine-tenths, and occasionally even more. In the country as a whole about one-half (53.9 per cent in 1923 and 44.3 per cent in 1926) of prisoners in prisons and reformatories are released through parole. The proportion of those paroled has in general increased, to a large extent in keeping with the indeterminate sentence. Parole has always been extensively availed of with juvenile offenders (at present perhaps with some three-fourths).

RESULTS OF PAROLE

It is next to impossible to indicate with any degree of definiteness to what extent parole has proved successful. Its failure may mean different things in different areas, varying from violation of some regulation or rule imposed upon the parolee by the parole authorities to actual apprehension for a new offense. The matter may be largely left to what comes within narrow personal observation or within a brief period of time. Above all, there is practically no means of ascertaining the final outcome with respect to a given case—the eventual fate of the parolee after his parole has ceased to operate upon him, and he has become a free man—and is in fact his own man. Renewed offending on his part may never come to light, or his identity as an old offender may be kept forever hidden. Commitment to a different institution may never be brought to the knowledge of those having charge of his first incarceration. Relapse into former ways may, with not a few, be a distinct possibility.¹

In what statistics exist upon the subject for different penal institutions there is little standardization or uniformity. The

¹ Of offenders discharged from the Massachusetts State Reformatory, after five years from the end of the period of parole, four-fifths were convicted of new offenses. S. S. and E. T. Glueck, *Five Hundred Criminal Careers*, 1929.

keeping of proper or full records, especially as they relate to the same offender in whatever jurisdiction his offenses may be committed, has hardly commenced in the United States.

So far as "success" of parole may be measured from the reports made upon it in different States, particularly in regard to cases where the terms of parole are in general observed or are not violated, the proportions are found to vary widely. In some areas the proportion is said to be 90 per cent, or even a higher proportion. In other areas the proportion is much less, being only 80 or 85 per cent, possibly only 70 or 75 per cent, now and then only 50 per cent. In many cases where the proportion is relatively low, the officials are out of touch with a number of those who have been paroled—a circumstance which may mean that some are doing well, or, on the other hand, that some are not. Of those to be set down as failures, the larger part are guilty of wrongdoing of rather minor or technical character, as in the violation of some provision of the parole, especially omission to make due report, and the smaller are guilty of a new offense. The latter group seldom constitute over 5 per cent of the total number paroled, perhaps not over 2 or 3 per cent. As a rule, a very small proportion, perhaps only 1 or 2 per cent, actually abscond. In a few States, where results are not so favorable, one-fourth of those paroled are said to disappear, and a like proportion to commit new crimes. The proportion of flagrant failures among penal offenders is not materially greater than the proportion of escapes from prison. The proportion of parole violators who are returned to prisons and reformatories constitute 4.0 per cent of all admissions; escaped prisoners who are recaptured and returned constitute 2.7 per cent (1926).¹

With juvenile delinquents the outcome is often quite unsatisfactory. Though in some cases as many as three-fourths of parolees are said to turn out well, in other cases from one-seventh to two-fifths, or more often from one-fourth to one-third, fail to do so, or have to be returned to their institutions. In certain instances from one-third to two-thirds of juvenile parolees are later found in adult penal institutions.

Most parole failures appear to be with persons who are weak in mind or in character and are easily led. Persons mentally defective or of psychopathic inferiority, it is believed, probably account singly for the largest number—perhaps from one-fifth or one-third. To be charged with no small part of those who again go wrong is harmful environment alone. For the fall of others

¹See p. 434.

account propensities toward drink or drugs, and perhaps toward vagrancy as well. Of inherent viciousness are a certain portion, with whom relapse or turning to old evil ways is not a difficult matter. Failures in parole are relatively of much greater frequency in the earlier part of the parole period than in the later, when yielding to temptation is easy, and when strength of character has not been built up. They are relatively of much greater frequency with old offenders than with first or occasional offenders. With those who have irregular employment they comparatively often occur. The system is always weakened by the circumstance that old offenders, when their time is up in prison, can no longer be kept, as they should be, and are thrust out into society, perhaps under so-called parole, with almost foregone consequences. Violation of parole does not appear to be the more frequent with respect to the more serious offenses. It is rather notable for offenses on the order of forgery and fraud. Violation appears less probable with the comparatively young and comparatively old offenders. It also seems the more probable with those having the longer prison sentences.

The ex-prisoner on parole often does not have a fair chance. Old temptations may beset him on every hand; he may often be out of touch with life; friends may be few; skill or experience for industrial undertaking may be lacking; work may be hard to find; there is always fear of having a former prison career become known, or of running afoul of the officers of the law.

The causes of failure of parole have as yet had but inadequate investigation; and all conclusions upon the subject must remain as yet of rather tentative nature.

The general results of parole cannot be definitely known at present. In the larger number of States the system is as yet but poorly developed, or is organized or carried on with but limited effectiveness. In some it can be described as hardly more than perfunctory. In very few States can any high order be said to have been reached. The main defects have been inadequate or imperfect examination as to the merits of individual cases and inadequate or imperfect supervision after parole is allowed. So far as are concerned the effects upon the individual offender as between confinement behind prison bars and parole outside them, the case for parole may not have proved essentially the weaker, and possibly considerably the better. Even when a man on parole later engages in wrongdoing, it may not always be charged that parole was of no benefit, though benefit was but temporary; without it the relapse might have been more serious still.

From what has appeared in respect to the arrangements for and the results from parole, it is quite evident that the entire matter is as yet in a rather confused state. The new procedure in the treatment of the criminal is doubtless now in its birth pangs. There is great room for improvement in the whole process, especially for the setting up of proper standards. A satisfactory system is to be worked out with experience, and after larger understanding of its principles, nature, and potentialities, and after better appreciation of it on the part of the public.

Parole cannot as yet be said to have come into its own in American jurisprudence. But it is moving forward. The fuller and the deeper the scrutiny into the system, the more accurate and the greater will be the valuation to be placed upon it. Parole has immense possibilities for good; and it can hardly be doubted that, together with probation, it is in due time to have an established and permanent, and perhaps paramount, place in the treatment by society of the offender against its law.

CHAPTER XLVII

EXTENT OF RELEASE BY DIFFERENT METHODS

GENERAL METHODS OF LEAVING PENAL INSTITUTIONS

In the following table is given the percentage distribution of prisoners, and of males and females separately, leaving prisons and reformatories and jails and workhouses, according to reason for leaving (1923).¹

PERCENTAGE DISTRIBUTION OF PRISONERS BY REASON FOR LEAVING GENERAL PENAL INSTITUTIONS

Reason for Leaving	Per Cent Distribution					
	Prisons and Reformatories			Jails and Workhouses		
	Total	Male	Fe-male	Total	Male	Fe-male
Total	100.0	100.0	100.0	100.0	100.0	100.0
Released	92.6	92.6	92.8	92.5	92.3	94.1
Sentence expired	33.4	33.4	33.3	57.8	58.2	53.5
Pardoned	3.5	3.2	8.3	2.8	2.8	2.2
Paroled	53.9	54.4	46.3	8.6	8.6	9.2
Fine paid	—	—	—	20.8	20.3	26.3
Other reasons	1.8	1.6	4.9	2.5	2.5	2.9
Escaped	3.2	3.3	1.5	1.2	1.3	0.5
Died	1.9	2.0	0.9	0.1	0.1	0.1
Transferred	1.7	1.5	4.1	1.0	0.9	1.5
To other penal institutions..	—	—	—	0.5	0.5	0.6
To nonpenal institutions....	1.6	1.5	3.5	0.4	0.3	0.8
Institution unknown	0.1	0.1	0.6	0.1	0.1	0.1
Reason for leaving unknown..	0.5	0.5	0.7	5.2	5.4	3.8

Of all prisoners in prisons and reformatories only one-third (33.4 per cent) serve out their full time, and are released on account of the expiration of their sentence. Over one-half (53.9 per cent) are given release through parole. Exercise of pardon-

¹The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927; Prisoners in State and Federal Prisons and Reformatories: 1926, 1929.

ing power is the means of leaving for 3.5 per cent. There are 1.8 per cent released for other reasons (commutation of sentence, order of court, etc.). By 3.2 per cent escape is effected. Death is the way of release for 1.9 per cent. With 1.7 per cent there is transfer to some other institution, in general a non-penal institution, and often an institution for the insane.

Of prisoners in jails and workhouses, considerably over one-half (57.8 per cent) serve full time, leaving only by reason of expiration of their sentence; one-fifth (20.8 per cent) are enabled to leave through the payment of fine—this means of release, however, being available only for those who have originally been imprisoned for nonpayment of fine. Parole, being intended mainly as a reformative measure, has but restricted application to jails and workhouses, only 8.6 per cent being released by this process. There are 2.8 per cent pardoned. Other causes account for the release of 2.5 per cent. There are 1.2 per cent who escape; 0.1 per cent who die; and 1.0 per cent who are transferred to another institution—penal as well as non-penal.

As between the sexes in prisons and reformatories considerably more than twice as many females are pardoned as males. A much larger proportion of females are also transferred to other institutions. Parole is made to apply to males somewhat more than to females. Escape is over twice as frequent among males as among females. The proportion of deaths is also greater for males. Equal proportions serve out terms. The situation as to the sexes is somewhat changed in jails and workhouses. Here pardon is more frequent for males, but parole more frequent for females. Release by payment of fine is more common with

PERCENTAGE DISTRIBUTION OF PRISONERS BY METHOD OF DISCHARGE FROM PRISONS AND REFORMATORIES

Method of Discharge	Per Cent Distribution		
	Total	Male	Female
Total.....	100.0	100.0	100.0
Released—total	93.2	93.0	96.4
Sentence expired	39.7	39.4	43.4
Paroled	44.3	44.4	41.9
Pardoned	2.9	3.0	1.7
Otherwise released	6.4	6.2	9.4
Executed	0.1	0.2	—
Died	1.6	1.7	0.9
Escaped	4.7	4.8	2.7
Method not reported	0.3	0.3	0.1

females than with males. A greater proportion of males serve out terms.

In the table on page 417 is given the percentage distribution of prisoners discharged from prisons and reformatories according to method of discharge, in a somewhat different classification (1926).

Here sentence is served out by two-fifths (39.7 per cent), and parole is afforded to a little over two-fifths (44.3 per cent). There are 2.9 per cent pardoned, and 6.4 per cent otherwise released. Escape accounts for 4.7 per cent, death for 1.6 per cent, and execution for 0.1 per cent. In this case a larger proportion of females serve out their sentence, while a larger proportion of males are pardoned.

In the following table is given the percentage distribution of juvenile offenders, and of males and females separately, according to reason for leaving special institutions (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS BY REASON FOR LEAVING SPECIAL INSTITUTIONS

Reason for Leaving	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Expiration of term of commitment	7.1	7.5	6.1
Discharge without parole.....	6.1	6.0	6.4
Parole	73.4	73.1	74.4
Pardon	1.0	0.9	1.1
Death	0.4	0.4	0.3
Escape	7.5	9.2	2.2
Transfer to other institutions.....	2.7	1.6	6.1
Other	1.7	1.2	3.3

Parole is by far the leading means of discharge from the special institutions for juvenile delinquents. It is the method with almost three-fourths (73.4 per cent). In addition 6.1 per cent are discharged without parole. Only 7.1 per cent serve out full time, and leave at the expiration of their sentence. By 7.5 per cent escape is effected. A small proportion—2.7 per cent—are transferred to some other institution. A still smaller proportion—1.0 per cent—are pardoned. Among males almost one-tenth (9.2 per cent) escape. Among females 6.1 per cent are transferred to other institutions—some of these other institutions being not of penal or correctional character.

In the following table is given the percentage distribution of

juvenile offenders, and of males and females separately, according to means of leaving general penal institutions (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS BY REASON FOR
LEAVING GENERAL INSTITUTIONS

Reason for Leaving	Per Cent Distribution		
	Total	Male	Female
Total	100.0	100.0	100.0
Expiration of sentence.....	46.0	45.7	47.5
Payment of fine	16.1	14.9	23.3
Pardon	2.3	2.3	2.5
Parole	20.4	21.4	13.0
Death	0.3	0.3	—
Escape	2.2	2.4	1.3
Transfer to nonpenal institution...	0.9	0.7	2.3
Transfer to other penal institution	2.5	2.6	2.0
Other	1.9	2.0	1.5
Not reported	7.5	7.7	6.0

In general penal institutions parole applies far less frequently, and serving out of sentence far more frequently, than in special institutions. Payment of fine is also an important means of discharge. Of those leaving general penal institutions, a little under one-half (46.0 per cent) do so by reason of expiration of sentence. Almost one-fifth (20.4 per cent) are paroled. One-sixth (16.1 per cent) leave on payment of fine. With a small proportion the means of leaving are pardon, escape, and transfer to penal or non-penal institutions. Parole is extended much more frequently to males, while payment of fine is the case much more frequently with females.

METHODS ACCORDING TO DIFFERENT GEOGRAPHIC AREAS

In the table on page 420 is given for the several geographic divisions the percentage distribution of prisoners leaving prisons and reformatories, according to reasons for leaving (not including transfers) (1923).

Parole is employed to the greatest extent in the eastern and far western parts of the country. In the Middle Atlantic division it is availed of for nine-tenths of prisoners, in the East North Central for four-fifths, in the New England for over three-fourths, in the Mountain for three-fourths, and in the Pacific for over seven-tenths. In the West North Central it is found for

PERCENTAGE DISTRIBUTION OF PRISONERS BY REASON FOR LEAVING PRISONS AND REFORMATORIES ACCORDING TO GEOGRAPHIC DIVISIONS

Reason for Leaving	Per Cent Distribution										
	United States	New England	Middle Atlantic	East North Central	West North Central	South Atlantic	East South Central	West South Central	Mountain	Pacific	Federal
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Released	94.8	98.0	97.1	96.4	97.9	86.7	90.7	93.4	96.2	92.9	97.9
Sentence expired	34.2	15.0	3.2	11.8	43.3	60.2	55.8	64.9	19.0	13.9	79.0
Paroled	3.6	4.5	1.8	1.3	0.8	9.9	8.1	4.8	1.3	5.6	1.1
Paroled	55.1	77.6	90.3	80.2	48.3	16.3	26.4	23.4	75.1	71.7	16.3
Other reasons	1.9	0.9	1.8	3.1	5.5	0.2	0.5	0.2	0.7	1.7	1.5
Escaped	3.3	0.5	1.1	1.9	0.7	11.2	5.4	4.3	2.4	4.8	0.8
Died	2.0	1.4	1.8	1.7	1.4	2.1	3.9	2.3	1.4	2.3	1.3

one-half. It is used the least in the southern divisions, the proportions here ranging from one-fourth to one-sixth. The last named proportion is also that for Federal prisons. Pardon as a means for releasing prisoners is resorted to most frequently in the three southern divisions and in the Pacific division. In several divisions only 1 or 2 per cent of prisoners receive pardon. The prisons in the southern divisions and the Federal prisons have the largest proportions of prisoners who serve out their sentences, or who leave prison only upon expiration thereof. Escape is effected most often in the southern divisions and the Pacific division. In several divisions less than 1 per cent of prisoners make their escape. In general where large use is made of parole there is comparatively slight recourse had to pardon. With parole also there is relatively little serving out of full sentence. With the increased use of parole escape seems the less to be expected.

METHODS ACCORDING TO CHARACTER OF OFFENSES

In the table on page 421 is given, according to principal offenses, the percentage of prisoners leaving prisons and reformatories for different reasons (1923).

Prisoners are relatively (above the average) the more likely to serve out their prison terms and to depart at the expiration thereof (or less likely to be subject to parole or pardon), in case of violation of drug laws, violation of liquor laws, offenses against the administration of government, fraud, possession of stolen property, and assault. Prisoners are relatively the more liable to leave by reason of pardon in the case of general offenses against sobriety, good order, and public policy (other than

PERCENTAGE OF PRISONERS BY REASON FOR LEAVING PRISONS AND REFORMATORIES ACCORDING TO OFFENSE

Offense	Per Cent of Total				
	Sentence Ex-pired	Par-doned	Paroled	Es-caped	Died
Total	34.2	3.6	55.1	3.3	2.0
Against the person.....	27.8	8.9	48.8	5.8	6.6
Assault	37.3	4.0	52.0	3.0	1.8
Homicide	20.7	12.6	46.4	7.9	10.2
Other	—	—	—	—	—
Against property	29.4	2.5	61.5	3.5	1.5
Burglary	28.7	1.9	62.1	4.3	1.7
Embezzlement	31.7	4.5	61.1	0.5	0.5
Forgery	33.8	1.9	58.9	2.6	0.9
Fraud	41.5	4.1	49.1	2.5	0.6
Possession of stolen property....	37.8	1.3	58.4	1.0	1.0
Larceny	30.6	2.4	61.3	2.8	1.3
Robbery	18.7	5.5	64.8	6.0	2.4
Other	23.8	2.2	66.9	3.7	1.5
Against sex morality.....	27.2	4.9	61.5	1.9	2.1
Rape	24.2	5.4	63.2	1.6	3.3
Other	29.5	4.6	60.3	2.1	1.1
Against administration of govern- ment	47.1	4.1	46.7	1.6	—
Against public health and safety...	74.8	0.8	21.0	0.5	1.0
Violation of drug laws.....	87.1	0.9	9.4	0.1	1.3
Other	31.0	0.5	62.4	1.9	—
Against sobriety, good order, and public policy	57.9	6.5	29.0	1.7	1.1
Violation of liquor laws.....	68.0	4.7	21.7	1.6	1.0
Other	15.5	13.7	59.4	2.5	1.4
Against children and prisoner's family	20.5	2.7	72.4	—	1.6
Unclassified and unknown.....	58.6	3.4	35.2	1.1	0.2

violation of liquor laws), homicide, robbery, rape, violation of liquor laws, general offenses against sex morality, embezzlement, fraud, offenses against the administration of government, and assault. Pardon seems especially likely to apply to certain offenses involving violence, or to certain offenses contrary to public peace or order, or to situations which may have tempted toward wrongdoing.

Prisoners are relatively the more apt to be paroled in the case of offenses against children and one's family, general offenses against property for gain (except fraud), general offenses against sex morality, offenses against public health and safety, and general offenses against sobriety, good order, and public policy.

Notably absent are offenses against the person or violation of liquor or drug laws. Prisoners in general charged with the more serious offenses, and consequently having the longer terms, are the more likely to have their prison terms shortened by special process, or leave through parole or pardon.¹ It is the length of the sentence rather than the nature of the offense involved here.

Prisoners are relatively the more prone to effect their leaving by escape in the case of homicide, robbery, and burglary. Escape is resorted to more frequently with these offenses because of the desperate state reached by those charged with their commission, together with the youth and bodily vigor so frequently belonging to such persons.

In the following table is shown the percentage of male and female prisoners discharged from prisons and reformatories by method of discharge according to form of offense (1926).

PERCENTAGE OF PRISONERS BY METHOD OF DISCHARGE FROM PRISONS AND REFORMATORIES ACCORDING TO OFFENSE

Sex and Offense	Per Cent of Total		
	Sentence Expired	Paroled or Pardoned	Other
Male	39.9	48.3	11.8
Homicide	22.8	50.4	26.8
Rape	28.9	60.2	11.0
Robbery	24.9	61.6	13.6
Assault	43.7	48.2	8.1
Burglary	32.6	57.3	10.1
Forgery	39.0	53.1	7.9
Embezzlement	30.5	59.5	10.0
Fraud	44.8	49.1	6.1
Possession of stolen property.....	47.9	43.7	8.5
Larceny	37.9	54.4	7.7
Sex offenses, except rape	41.7	50.6	7.6
Violation of liquor laws.....	67.3	25.3	7.4
Violation of drug laws	89.2	8.0	2.7
Carrying weapons	39.7	53.6	6.7
Nonsupport or neglect of family...	36.6	54.1	9.3
Other	52.3	40.7	7.0
Not reported	10.0	46.0	44.0
Female	44.6	43.0	12.4
Larceny	36.7	51.7	11.7
Sex offenses	28.4	61.1	10.5
Violation of liquor laws.....	54.5	15.6	29.9
Other	60.1	32.5	7.4
Not reported	44.7	40.8	14.5

¹ See p. 408.

For males release through expiration of sentence is relatively more likely in the case of violation of drug laws, violation of liquor laws, possession of stolen property, fraud, assault, and general sex offenses; and through parole or pardon, in the case of robbery, rape, embezzlement, burglary, larceny, nonsupport of family, carrying weapons, forgery, general sex offenses, and homicide. For females release through expiration of sentence is the more likely in the case of violation of liquor laws; and through parole or pardon, in the case of general sex offenses and larceny.

In the table on page 424 is given, according to offense, the percentage of prisoners leaving jails and workhouses for different reasons (1923).

The proportion leaving by reason of expiration of sentence is relatively high (above the average) for violation of drug laws, trespassing, vagrancy, drunkenness, larceny, malicious mischief, and fraud; by reason of payment of fine, for gambling, violation of city ordinances, unspecified offenses against the person, disorderly conduct, adultery, prostitution, violation of traffic laws, keeping house of ill fame, unspecified offenses against public health and safety, violation of liquor laws, and carrying concealed weapons; and by reason of parole or pardon, for nonsupport or neglect of family, burglary, rape, unspecified offenses against sobriety, good order and public policy, homicide, forgery, unspecified offenses against property, unspecified offenses against children and one's family, robbery, unspecified offenses against public health and safety, violation of drug laws, unspecified offenses against sex morality, violation of liquor laws, adultery, keeping house of ill fame, assault, larceny, offenses against the administration of government, carrying concealed weapons, vagrancy, and unspecified offenses against the person.

Release from jail or workhouse through payment of fine seems to be especially the case for violation of local ordinances, and of different forms of what is known in general as "disorderly conduct." An important consideration bearing upon the reason for leaving jail or workhouse lies in the nature of sentence involved, especially in imprisonment for nonpayment of fine. The financial condition of different offenders is often a factor in the matter.

METHODS ACCORDING TO LENGTH OF SENTENCE OR TIME SERVED

In the table on page 425 is given the percentage distribution of prisoners leaving jails and workhouses, as to sentence and as to

PERCENTAGE OF PRISONERS BY REASON FOR LEAVING JAILS AND WORKHOUSES
ACCORDING TO OFFENSE

Offense	Per Cent of Total			
	Sentence Expired	Fine Paid	Paroled or Par- doned	Other Reasons
Total	61.0	21.9	12.1	5.0
Against the person.....	55.9	21.9	15.1	7.1
Assault	57.1	21.8	15.0	6.2
Homicide	35.3	3.7	25.0	36.0
Other	42.8	37.1	12.9	7.2
Against property	65.3	12.2	15.0	7.4
Burglary	57.4	1.7	31.4	9.6
Forgery	55.9	8.8	24.7	10.7
Fraud	63.5	21.1	10.3	5.1
Larceny	67.2	11.2	13.8	7.8
Robbery	52.1	4.2	22.2	21.5
Malicious mischief	65.0	19.1	11.3	4.6
Trespassing	73.9	20.7	3.3	2.2
Other	58.4	10.2	24.4	7.1
Against sex morality.....	54.2	23.5	15.1	7.2
Adultery	45.7	30.7	17.0	6.6
Prostitution	55.7	26.9	11.9	5.5
Keeping house of ill fame.....	56.8	23.8	15.1	4.3
Rape	48.0	7.6	30.7	13.8
Other	55.0	16.8	17.5	10.6
Against administration of govern- ment	58.5	16.7	13.8	11.0
Against public health and safety....	59.8	25.4	10.6	4.1
Carrying concealed weapons.....	56.9	22.7	13.3	7.1
Violation of city ordinances.....	53.1	41.9	3.8	1.2
Violation of drug laws.....	74.2	2.6	19.0	4.2
Violation of traffic laws	60.3	24.8	10.1	4.8
Other	50.4	23.1	19.3	7.2
Against sobriety, good order, and public policy	61.6	23.3	10.9	4.2
Disorderly conduct	55.3	33.8	7.4	3.5
Drunkenness	66.2	21.9	9.5	2.3
Gambling	49.5	43.7	4.8	2.0
Vagrancy	73.8	6.7	13.3	6.2
Violation of liquor laws.....	51.3	23.1	17.1	8.4
Other	39.4	19.0	30.3	11.3
Against children and prisoner's family	40.1	11.3	30.4	18.3
Nonsupport or neglect.....	36.3	7.9	33.6	22.2
Other	49.3	19.7	22.4	8.6
Unclassified and unknown	58.2	18.1	17.2	6.5

time served, for the several periods of time, according to whether sentence has expired, fine has been paid, or there has been parole or pardon, together with the percentage for each method of leaving according to period of time served (1923).

PERCENTAGE OF PRISONERS BY REASON FOR LEAVING JAILS AND WORKHOUSES
ACCORDING TO LENGTH OF SENTENCE AND TIME SERVED

Time Involved	Per Cent Distribution						Per Cent of Total		
	Sentence			Time Served					
	Sentence Expired	Fine Paid	Paroled or Pardoned	Sentence Expired	Fine Paid	Paroled or Pardoned	Sentence Expired	Fine Paid	Paroled or Pardoned
Total.....	100.0	100.0	100.0	100.0	100.0	100.0	57.8	20.8	11.4
1 year or over....	2.2	1.3	12.3	1.1	0.1	4.0	53.7	2.0	39.1
1 to 11 months...	47.2	42.3	65.5	38.1	10.0	39.0	82.1	6.8	14.5
9 to 11 months.	0.5	0.4	1.9	1.4	0.1	2.5	68.1	1.2	24.0
6 to 8 months..	4.4	2.1	13.2	2.1	0.5	3.3	67.5	5.5	20.7
3 to 5 months..	9.6	6.2	14.5	8.9	1.8	12.0	70.2	5.1	18.7
2 months	7.5	7.1	9.6	7.7	2.2	7.7	71.9	7.2	14.2
1 month	25.3	26.6	26.2	18.0	5.5	13.5	74.1	8.1	10.9
Less than 1 month	50.6	56.4	22.2	60.9	89.8	57.1	53.7	28.3	9.9
20 to 29 days...	6.4	14.3	9.1	15.2	4.1	7.5	79.1	7.7	7.7
10 to 19 days...	23.4	27.3	9.4	20.6	10.0	16.1	70.8	12.3	10.9
5 to 9 days.....	9.4	9.2	2.7	10.8	13.8	11.7	54.7	25.0	11.7
Less than 5 days	11.3	5.7	1.0	14.3	61.8	21.7	31.5	48.9	9.4

Prisoners leave jails and workhouses in consequence of parole or pardon the more frequently when the term is relatively long; that is, sentences are less likely to be served out in case of release through this means. Sentences are least likely to be served out in case of release through payment of fine—a longer stay behind bars being then unnecessary. They leave on payment of fine rather frequently after a relatively brief stay in jail or workhouse (most often of but a few days). In other words, when fines are paid to effect release they are most likely to be paid soon after imprisonment. Serving full time, or till expiration of sentence, is the more likely to be the case with the shorter sentences.

In the table on page 426 is given the percentage distribution of prisoners leaving prisons and reformatories according to reason for leaving by length of time served, and according to length of time served by reason for leaving (1923).

Prisoners are apparently somewhat more likely to leave prison by reason of expiration of their sentence when they have served a little under one year, three years, a little over one-half year, and four years. They are apparently a little more likely to be paroled or pardoned when they have served one year, two years,

PERCENTAGE OF PRISONERS BY REASON FOR LEAVING PRISONS AND REFORMATORIES ACCORDING TO TIME SERVED

Time Served	Per Cent Distribution by Reason for Leaving			Per Cent of Total Leaving Because—		
	Sentence Expired	Paroled or Pardoned	Other or Unknown Reasons	Sentence Expired	Paroled or Pardoned	Other or Unknown Reasons
Total	100.0	100.0	100.0	30.4	52.2	17.4
5 to 49 years.....	5.4	5.8	7.0	28.0	51.4	20.6
10 to 49 years.....	1.0	1.5	2.0	21.2	54.7	24.1
5 to 9 years.....	4.4	4.3	5.0	30.2	50.3	19.5
2 to 4 years.....	19.9	22.9	18.4	28.5	56.4	15.1
4 years	2.7	2.4	2.7	31.7	50.0	18.3
3 years	6.9	5.4	4.4	36.9	49.6	13.4
2 years	10.4	15.1	11.3	24.2	60.7	15.1
1 year	38.5	49.9	21.9	28.2	62.7	9.2
Less than 1 year.....	35.8	21.2	47.4	36.0	36.6	27.3
9 to 11 months.....	20.6	8.2	7.6	52.8	36.1	11.1
6 to 8 months.....	9.2	7.1	8.7	35.0	46.1	18.9
3 to 5 months.....	4.2	4.2	10.7	24.2	40.9	34.9
Less than 3 months..	1.7	1.7	20.5	10.6	18.0	71.4
Time served unknown..	0.2	0.2	5.3	6.3	8.4	85.4

and from ten to forty-nine years. Parole or pardon is the more probable with the sentence of greater length.

In general the longer a prisoner's sentence, the less likely is it to be served out to the end. An important consideration in the matter is that prisoners having long terms may be the more likely to be on their good behavior, with possible consequent reduction of their time. In other words, those charged with the more serious offenses are likely to have their term shortened, especially by parole, while those charged with the less serious offenses are the more likely to serve full time. A special factor in determining the method of release from prison is the age of the prisoners. Those guilty of certain offenses are often comparatively young, and in consequence have greater chance of parole.

In the table on page 427 is given the percentage distribution of prisoners discharged, and of males and females separately, from prisons and reformatories by time served, according to the several methods of discharge (1926).

For those having served less than one year, the proportion is not far from one-half in the case of discharge through expiration of sentence, and only one-fifth in the case of discharge through

EXTENT OF RELEASE BY DIFFERENT METHODS 427

PERCENTAGE DISTRIBUTION OF PRISONERS BY METHOD OF DISCHARGE FROM PRISONS AND REFORMATORIES ACCORDING TO TIME SERVED

Sex and Time Served	Per Cent Distribution		
	Sentence Expired	Paroled or Pardoned	Other
Total	100.0	100.0	100.0
Under 1 year.....	44.7	20.2	35.4
1 to 1.99 years.....	28.1	41.5	17.1
2 to 2.99 years.....	11.0	14.6	7.6
3 to 3.99 years.....	6.1	6.0	3.7
4 to 4.99 years.....	2.6	3.6	3.1
5 to 9.99 years.....	4.2	5.8	4.6
10 years and over.....	0.8	1.3	1.7
Not reported	2.5	7.0	26.7
Male	100.0	100.0	100.0
Under 1 year.....	43.1	19.6	33.0
1 to 1.99 years.....	29.5	42.0	17.9
2 to 2.99 years.....	11.6	14.4	7.9
3 to 3.99 years.....	6.3	6.2	3.8
4 to 4.99 years.....	2.7	3.7	3.3
5 to 9.99 years.....	4.4	6.0	4.9
10 years and over.....	0.8	1.4	1.8
Not reported	1.5	6.7	27.3
Female	100.0	100.0	100.0
Under 1 year.....	66.0	30.0	68.8
1 to 1.99 years.....	10.3	33.9	5.7
2 to 2.99 years.....	3.0	17.7	3.5
3 to 3.99 years.....	3.4	3.3	2.2
4 to 4.99 years.....	1.1	1.9	0.3
5 to 9.99 years.....	1.0	2.4	1.3
10 years and over.....	0.1	0.1	0.3
Not reported	15.1	10.8	17.8

parole or pardon. For those having served less than three years the respective proportions are almost the same, or about four-fifths. For those having served five years and over the proportion is only a little greater in the case of discharge through parole or pardon.

In the first table on page 428 are given, according to method of discharge from prisons and reformatories among males and females, the average time served, the average length of the maximum sentence, and the percentage which the former constitutes of the latter (1926).

In case of discharge through expiration of sentence the average time served is somewhat smaller than through parole or pardon, while the average length of maximum sentence is much smaller.

**AVERAGE TIME SERVED AND MAXIMUM LENGTH OF SENTENCE BY METHOD OF
DISCHARGE FROM PRISONS AND REFORMATORIES**

Method of Discharge	Average Time Served (Years)		Average Length of Maximum Sentence (Years)		Per Cent of Length of Sentence by Time Served	
	Male	Female	Male	Female	Male	Female
Total	1.96	1.20	6.28	3.82	31.2	31.4
Sentence expired ...	1.75	0.87	2.65	1.57	66.1	55.4
Paroled or pardoned.	2.12	1.65	8.59	4.91	24.7	33.7
Other	2.02	0.70	10.88	5.41	18.6	12.9

**PERCENTAGE DISTRIBUTION OF RECIDIVISTS BY METHOD OF DISCHARGE FROM
PRISONS AND REFORMATORIES ACCORDING TO TIME SERVED**

Sex and Time Served	Per Cent Distribution					
	First Offenders		Recidivists			
			Not Previously Committed to Prisons or Reformatories but Committed to Other Penal Institutions (Jails, etc.)		Previously Committed to Prisons and Reformatories	
	Sentence Expired	Paroled or Pardoned	Sentence Expired	Paroled or Pardoned	Sentence Expired	Paroled or Pardoned
Male	100.0	100.0	100.0	100.0	100.0	100.0
Under 1 year.....	38.9	21.1	38.0	12.3	38.5	13.7
1 to 1.99 years....	36.2	51.0	33.3	51.9	29.0	36.2
2 to 2.99 years....	12.5	14.1	14.6	18.1	12.4	20.2
3 to 3.99 years....	5.7	4.9	5.8	7.2	8.9	10.6
4 to 4.99 years....	2.1	2.1	3.1	3.7	3.4	6.6
5 to 9.99 years....	3.7	4.5	4.6	5.7	6.4	10.1
10 years and over.	0.6	1.0	0.4	0.8	1.3	2.4
Not reported.....	0.4	1.0	0.2	0.3	0.1	0.2
Female	100.0	100.0	100.0	100.0	100.0	100.0
Under 1 year.....	82.0	27.6	62.2	27.0	77.4	53.7
1 to 1.99 years....	11.4	42.7	15.9	38.0	13.2	33.3
2 to 2.99 years....	1.9	21.5	7.3	23.4	2.8	5.6
3 to 3.99 years....	3.0	3.9	6.1	5.1	2.8	3.7
4 to 4.99 years....	0.5	1.6	3.7	2.9	0.9	1.9
5 to 9.99 years....	0.7	2.3	3.7	2.9	1.9	1.9
10 years and over.	—	—	—	—	—	—
Not reported.....	0.5	0.4	1.2	0.7	0.9	—

The proportion is thus much greater for discharge through expiration of sentence, prisoners being much more likely to serve out a large part of their sentence in that case. With males the proportion which the average time served constitutes of the length of sentence is about two-thirds in the case of discharge through expiration of sentence, and one-fourth in case of discharge through parole or pardon. With females the respective proportions are somewhat over one-half and one-third.

In the second table on page 428 is given the percentage distribution for first offenders and recidivists, male and female, discharged from prisons and reformatories, according to time served, and with relation to previous penal experience, whether discharged through expiration of sentence or through parole or pardon (1926).

Recidivists generally have somewhat longer sentences than do first offenders, especially recidivists who have once been in prisons. Among males discharged through expiration of sentence the percentage having served five years and over is 4.3 for first offenders, 5.0 for jail recidivists, and 7.7 for prison recidivists; the respective percentages among those discharged through parole or pardon are 5.5, 6.5, and 12.5. A partial explanation of this situation is that recidivists are often convicted of the more serious offenses, and in consequence have sentences for longer times. As between the two methods of discharge longer periods in general have been served by those who are paroled or pardoned. First offenders are in general more likely to be paroled or pardoned than are recidivists—though this is not the case with respect to offenders whose previous penal experience has been limited to jails and other institutions of a local character.

In the table on page 430 are given for male and female prisoners discharged from prisons and reformatories, with respect to the several offenses, the average years of maximum sentence, according to the method of discharge (1926).

In general there is a much longer sentence in case discharge is through parole or pardon than in case of discharge through expiration of sentence, though it is longest of all when it is through some other method. This is also the order for some of the more serious offenses. For all offenses the time is greater in the case of discharge through parole or pardon than through expiration of sentence.

In the first table on page 431 is given for male and female prisoners discharged from prisons and reformatories the average

AVERAGE YEARS OF MAXIMUM SENTENCE BY METHOD OF DISCHARGE FROM
PRISONS AND REFORMATORIES ACCORDING TO OFFENSE

Offense	Male			Female		
	Sentence Expired (Years)	Paroled or Par- doned (Years)	Other- wise Dis- charged (Years)	Sentence Expired (Years)	Paroled or Par- doned (Years)	Other- wise Dis- charged (Years)
Total	2.65	8.59	10.88	1.57	4.91	5.41
Homicide	7.11	18.29	28.70	—	15.12	—
Rape	5.03	11.38	15.36	—	—	—
Robbery	5.76	13.17	18.77	—	—	—
Assault	2.52	7.78	8.40	1.15	5.80	—
Burglary	3.66	9.05	8.61	—	—	—
Forgery	2.81	9.88	8.55	—	9.35	—
Embezzlement	2.40	5.95	6.55	—	—	—
Fraud	2.07	5.57	4.01	—	—	—
Possession of stolen property	1.87	4.70	4.47	—	—	—
Larceny	2.39	7.25	6.43	1.43	5.01	—
Sex offenses, except rape	2.76	7.89	7.88	1.68	3.25	3.65
Violation of liquor laws.	1.25	2.63	2.52	0.35	2.16	—
Violation of drug laws..	1.89	3.46	3.61	1.15	—	—
Carrying weapons	1.48	3.81	—	—	—	—
Nonsupport or neglect of family	1.24	2.81	2.32	—	—	—
Other	2.16	6.07	4.36	1.31	3.26	—
Not reported	2.05	6.17	4.80	—	1.36	—

time served (years), for the several offenses, according to methods of discharge (1926).

The average time of confinement in general is longest when discharge is through parole or pardon, shortest when it is through expiration of sentence, and intermediate between the two when it is by other methods. The respective periods in years for males are 2.12, 2.02, and 1.75. With females the order is somewhat different, or 1.65, 0.70, and 0.87. The order varies considerably as between the various offenses.

In the second table on page 431 is given, by way of contrast between definite sentence and indeterminate sentence, the percentage leaving prisons and reformatories by different means, according to length of sentence (1923).

As would be expected, the proportion of prisoners who serve out their sentence is far greater with the definite sentence than with the indeterminate. The proportion for the former is a little over three-fifths (61.9 per cent), and for the latter a little over

AVERAGE TIME SERVED BY METHOD OF DISCHARGE FROM PRISONS AND REFORMATORIES ACCORDING TO OFFENSE

Offense	Average Time Served (Years)					
	Male			Female		
	Sentence Expired	Paroled or Pardoned	Otherwise Discharged	Sentence Expired	Paroled or Pardoned	Otherwise Discharged
Total	1.75	2.12	2.02	0.87	1.65	0.70
Homicide	4.34	5.58	4.39	2.85	3.26	3.04
Rape	2.85	2.76	3.16	—	—	—
Robbery	3.61	3.26	2.46	2.37	2.10	0.61
Assault	1.78	2.05	1.60	0.79	2.05	0.33
Burglary	2.27	2.04	1.73	1.69	2.10	0.76
Forgery	1.85	1.76	1.53	1.04	1.67	1.55
Embezzlement	1.61	1.35	0.83	0.41	1.49	—
Fraud	1.51	1.49	1.17	1.63	1.46	0.19
Possession of stolen property	1.46	1.45	0.92	0.80	1.07	0.81
Larceny	1.69	1.72	1.61	0.92	1.57	1.07
Sex offenses, except rape	1.79	2.04	1.62	1.32	1.52	0.66
Violation of liquor laws	0.90	0.94	0.62	0.43	0.72	0.16
Violation of drug laws	1.38	1.30	0.95	0.96	1.27	0.62
Carrying weapons	1.06	1.62	0.88	0.42	0.78	0.41
Nonsupport or neglect of family	0.98	1.04	0.73	0.44	1.21	1.60
Other	1.27	1.68	1.08	0.66	1.68	0.50
Not reported	1.34	1.90	0.91	1.42	0.66	2.74

PERCENTAGE OF PRISONERS BY REASON FOR LEAVING PRISONS AND REFORMATORIES ACCORDING TO LENGTH OF SENTENCE UNDER DEFINITE AND INDETERMINATE SENTENCES

Length of Maximum Sentence	Per Cent of Total									
	Under Definite Sentence					Under Indeterminate Sentence				
	Sentence Expired	Par-doned	Pa-rolled	Es-caped	Died	Sentence Expired	Par-doned	Pa-rolled	Es-caped	Died
Total	61.9	5.0	25.8	3.7	2.0	13.1	2.5	78.3	2.7	1.5
5 years or over	32.4	10.8	38.2	9.9	5.5	5.8	2.8	84.3	3.2	1.7
Life	0.3	19.2	45.5	16.1	14.7	—	—	—	—	—
Maximum not fixed	—	—	—	—	—	78.0	—	16.1	0.8	2.5
10 years or over	29.0	11.4	36.0	11.8	6.4	3.1	2.3	87.5	3.3	1.9
5 to 9 years	43.9	7.8	37.3	7.0	2.3	6.5	3.6	82.9	3.0	1.3
2 to 4 years	61.7	4.3	29.5	2.9	1.2	18.6	1.5	75.2	2.0	1.0
4 years	43.3	1.8	48.6	3.4	2.1	17.0	4.0	72.8	2.5	2.5
3 years	45.3	6.7	41.9	4.0	1.2	12.5	1.3	80.8	2.6	1.0
2 years	72.3	3.7	20.3	2.4	1.0	28.3	1.0	67.5	1.0	0.4
1 year	81.3	2.2	14.6	0.7	0.9	64.9	1.5	30.8	0.6	0.8
Less than 1 year	72.3	1.5	13.3	0.8	0.3	—	—	—	—	—
Minority	—	—	—	—	—	—	—	—	—	—
Unknown	74.7	4.6	16.7	2.9	0.6	—	—	—	—	—

one-eighth (13.1 per cent)—a proportion almost five times as great for the one as for the other.

On the other hand, parole is employed mainly in connection with the indeterminate sentence, the prisoner having to prove himself while in prison suited for release. The proportion paroled is thus far greater with the indeterminate sentence than with the definite—or over three-fourths (78.3 per cent) for the one as against one-fourth (25.8 per cent) for the other. Pardon is extended twice as frequently in the case of the definite sentence as in the case of the indeterminate, or 5.0 per cent as against 2.5 per cent. This is possibly to counteract to some extent the effects of parole with the indeterminate sentence. The proportion who escape from prison is greater with the definite sentence—a circumstance, perhaps, due in some part to an increased desperateness under this form of sentence. With a longer term also there is greater opportunity to work out means of escape.

Under either form of sentence, the shorter the sentence in general, the greater is the likelihood of a full term being served. Under the indeterminate sentence the highest proportion leaving through expiration of sentence is for those having no maximum sentence fixed. Pardon and parole, while more probable with the longer sentence of either system, are less pronounced with such sentences under the indeterminate sentence. Escape is also the more manifest with the longer sentence under the definite sentence.

In the table on page 433 is given the percentage distribution of prisoners leaving prisons and reformatories, contrasted between length of sentence and term served, between the definite and indeterminate sentence, and between expiration of sentence and parole and pardon, according to length of sentence or time served (1923).

As before, the longer the sentence imposed upon offenders, the less likely is full time to be served. Under the definite sentence in the case of prisoners leaving prison on account of the expiration of their sentences, 11.7 per cent have sentences of five years or over, while only 4.8 per cent actually serve their term out; under the indeterminate sentence, the respective proportions are 30.2 per cent and 6.1 per cent. With the shorter sentences, on the other hand, full time comes nearer being served.

Parole or pardon is once more seen to apply particularly to prisoners with relatively long terms. In the case of prisoners paroled or pardoned, the contrast becomes even more marked between the sentences imposed and the actual time served. Of prisoners under the definite sentence, 35.6 per cent have a term

EXTENT OF RELEASE BY DIFFERENT METHODS 433

PERCENTAGE DISTRIBUTION OF PRISONERS BY REASON OF LEAVING PRISONS AND REFORMATORIES CONTRASTED AS TO LENGTH OF SENTENCE AND TIME SERVED UNDER DEFINITE AND INDETERMINATE SENTENCE

Length of Sentence or Time Served	Per Cent Distribution							
	Length of Sentence				Time Served			
	Sentence Expired		Paroled or Pardoned		Sentence Expired		Paroled or Pardoned	
	Under Definite Term Sentence	Under Indeterminate Sentence (Maximum)	Under Definite Term Sentence	Under Indeterminate Sentence (Maximum)	Under Definite Term Sentence	Under Indeterminate Sentence (Maximum)	Under Definite Term Sentence	Under Indeterminate Sentence (Maximum)
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
5 years and over	11.7	30.2	35.6	74.1	4.8	6.1	11.3	4.0
Life	—	0.1	7.5	0.9	—	—	—	—
Maximum not fixed..	—	6.6	—	0.2	—	—	—	—
10 years and over ...	3.2	8.8	10.5	41.4	1.0	0.5	4.6	0.6
5 to 9 years	8.5	14.6	17.6	31.5	3.8	5.6	6.8	3.4
2 to 4 years	40.0	33.5	44.0	22.3	17.5	27.3	20.3	23.5
4 years	3.3	3.4	7.8	2.5	2.5	3.1	2.7	2.2
3 years	7.9	12.0	16.9	12.8	5.9	10.4	5.4	5.3
2 years	28.8	18.1	19.2	7.1	9.1	13.8	12.2	16.0
1 year	39.9	30.8	16.6	2.5	39.7	34.6	36.5	54.4
Less than 1 year	5.7	4.2	2.4	0.3	37.9	31.7	31.6	17.9
9 to 11 months	—	—	—	—	24.6	9.6	8.2	8.2
6 to 8 months	—	—	—	—	8.7	10.6	9.4	6.4
3 to 5 months	—	—	—	—	2.9	9.1	9.9	2.4
Less than 3 months..	—	—	—	—	1.6	2.4	4.1	1.0
Minority	—	0.4	—	0.4	—	—	—	—
Unknown	2.6	0.9	1.5	0.4	0.2	0.2	0.2	0.2

of five years or over, but only 11.3 per cent serve that time; of those under the indeterminate sentence 74.1 per cent have a maximum of five years or over, but only 4.0 per cent serve that time. The respective percentages with respect to ten years and over are 10.5 and 4.6, and 41.4 and 0.6.

Whatever the method of leaving prison, the differences are greater with respect to the indeterminate sentence. The differences are most pronounced with respect to the length of sentence where there is involved parole. In fact great differences are to be expected with this use of indeterminate sentences.

To some extent the disproportion between the sentence imposed and the time served in prison is "due to the system of allowing deductions from sentences as a reward for good conduct in the case of many prisoners who nominally serve out their terms and are released upon expiration of sentence."¹ The differences between the formal length of the sentence and the time actually spent behind prison bars will very likely become even greater with the passing of the years.

¹ Bureau of the Census—Prisoners: 1923, 1927, p. 168.

MOVEMENT OF PRISON POPULATION

In the following table are given the number of prisoners present in prisons and reformatories at the beginning of a particular year (1926), the number of admissions and of discharges during the year, and the number present at the beginning of the following year (1927).

NUMBER OF ADMISSIONS TO AND DISCHARGES FROM PRISONS AND REFORMATORIES IN ONE YEAR

Movement of Prisoners	Total	Male	Female
Prisoners present Jan. 1, 1926	90,047	86,663	3,384
In institution	83,981	80,638	3,343
In custody outside institution	6,066	6,025	41
Admissions during the year	55,502	52,375	3,127
Received from courts	47,000	44,163	2,837
Parole violators returned	2,228	2,079	149
Escaped prisoners recaptured	1,471	1,422	49
Transfers from other institutions	3,405	3,355	50
Other admissions	1,398	1,356	42
Total prisoners handled	145,549	139,038	6,511
Discharges during the year	49,424	46,529	2,895
Sentence expired	17,831	16,657	1,174
Paroled	19,917	18,783	1,134
Pardoned	1,296	1,250	46
Otherwise released	2,883	2,629	254
Executed	66	66	—
Died	724	701	23
Escaped	2,121	2,049	72
Transferred to other institutions	4,460	4,270	190
Method of discharge not reported	126	124	2
Prisoners present Jan. 1, 1927	96,125	92,509	3,616
In institution.....	89,077	85,556	3,521
In custody outside institution	7,048	6,953	95

The prison population is a greatly changing body; it has a fairly rapid turnover. Of those present at the beginning of the year, over one-half (54.7 per cent) are discharged before its end, though part of the deductions comes from new admissions, who form three-fifths, or 61.1 per cent, of the number present at the beginning. The excess of admissions over discharges (6,078) constitutes 10.9 per cent of admissions. Of admissions, 84.5 per cent are from courts; 4.0 per cent, parole violators returned; 2.7 per cent, escaped prisoners recaptured; 6.2 per cent, transfers

from other institutions; and 2.6 per cent, other admissions. The proportions discharged by different methods have been considered.

According to the statistics of the Census Bureau for 1923, approximately 45,000 persons are released from or leave prisons and reformatories each year; approximately 300,000, jails and workhouses; and approximately 7,000, special institutions for juvenile delinquents. In these figures there are of course a number of repetitions or duplications, the same offender serving more than one term of imprisonment. The effect of repeating upon the numbers concerned is probably not great in the case of prisons and reformatories, and in the case of juvenile institutions. But it is very pronounced with jails and workhouses; in them the actual or net number departing in a given year is far less than the number given.

PART VIII
PENAL INSTITUTIONS

CHAPTER XLVIII

PENAL INSTITUTIONS IN GENERAL

CLASSIFICATION OF PENAL INSTITUTIONS ACCORDING TO JURISDICTION CONCERNED

Penal institutions in the United States (apart from correctional institutions under private auspices) are under four separate jurisdictions: State, county, municipal, and Federal. Under the Federal Government are prisons only (1923). Some offenders serving short sentences are provided for in State and local institutions.¹ Women offenders against Federal laws in general have been placed in such institutions. Special Federal institutions have now been created for women and for young delinquents.

By the State are maintained prisons and reformatories and State farms and juvenile reformatories. According to the classification adopted by the Census Bureau, an institution is considered as a reformatory if most or all of its inmates are under indeterminate sentence or are eligible to parole—presumably subject to reformatory influences—or if few or none are convicted for the most serious offenses. "State farms" are only for persons under short sentences. They receive mainly misdemeanants. Not to be included with them are State farms which are of a prison type, and in which are persons guilty of felonies; nor so-called State or industrial farms for women, which are really on the order of reformatories. The State farm in a few States is known as the State house of correction. Juvenile reformatories are for young offenders, usually not over eighteen—or perhaps not over twenty-one years of age.

County institutions are mostly jails, with some workhouses and some county farms, with a limited number of chain gangs in certain parts of the country, and with a certain number of juvenile reformatories. Municipal institutions are largely work-

¹Probably in the jails of more than one-third of the counties of the United States there are Federal prisoners. Attempts are now being made to have special Federal jails at certain places.

houses or jails, with some municipal farms, with a limited number of "stockades" for brief confinement, and with a certain number of juvenile institutions. There are also some houses of correction on the order of workhouses. In a few States there are county penitentiaries. County and municipal institutions may be known as local institutions.

In addition, there are a number of private correctional institutions, mainly for delinquent children or for delinquent females.

In all, in the United States there are (1923) 3 Federal prisons; 99 State institutions (61 prisons and 38 reformatories); and 1900 county institutions and 330 municipal institutions—besides 450 county and municipal institutions reporting no prisoners (and 750 such institutions not reporting, which probably have few or no prisoners). There are 145 institutions for juvenile delinquents—93 State, 30 county or municipal, and 22 private. There are 281 other private institutions. (Detention homes are not included.)¹

In 1926-1927 there were 1488 industrial schools of all kinds for juvenile delinquents—industrial schools, training schools, reform schools, parental schools, protectories, junior republics, Houses of the Good Shepherd, etc.²

PROPORTIONS OF OFFENDERS IN DIFFERENT INSTITUTIONS

In the table on page 441 is given the percentage distribution of (adult) inmates in and of commitments to general penal institutions according to the class of penal institution in which they are confined (1923).

Of prisoners behind prison bars in the United States, considerably over one-half (56.7 per cent) are to be found in State prisons. A little over one-eighth (13.2 per cent) are in reformatories. There are 2.0 per cent on State farms. Almost three-fourths (71.9 per cent) of prison inmates are thus in State institutions of some kind. About one-sixth (15.9 per cent) are in county institutions. About one-thirteenth (7.9 per cent) are in municipal institutions. In Federal institutions are 4.3 per cent.

¹ The statistics in this chapter are taken from reports of Census Bureau—Prisoners: 1923, 1927; Children under Institutional Care: 1923, 1927—unless otherwise indicated. In 1929 there were 112 State penal institutions listed. National Society of Penal Information, Handbook, 1929. See also American Prison Association, State and National Penal and Correctional Institutions of United States of America and Canada, 1930.

² United States Bureau of Education, Bulletin, 1928, No. 10 (Industrial School for Delinquents).

PERCENTAGE DISTRIBUTION OF PRISONERS IN DIFFERENT PENAL INSTITUTIONS

Class of Institution	Per Cent Distribution	
	Inmates	Commitments
Total	100.0	100.0
State prisons	56.7	7.4
Reformatories	13.2	2.9
State farms	2.0	1.7
County jails	7.7	34.7
Municipal jails	1.8	23.4
County workhouses	4.8	8.1
Municipal workhouses	5.3	12.8
County farms and chain gangs	3.4	4.0
Municipal farms and stockades	0.8	3.8
Federal prisons	4.3	1.2

Of all commitments to penal institutions, slightly over one-third (34.7 per cent) are to county jails, and almost one-fourth (23.4 per cent) to municipal jails. To both these classes of institutions and to county and municipal workhouses are over three-fourths (79.0 per cent) of commitments. To county and municipal farms, chain gangs, and stockades are committed 7.8 per cent. To county institutions of all kinds 46.8 per cent of prisoners are committed, and to municipal institutions of all kinds 40.0 per cent—or to county and municipal institutions of all kinds not far from nine-tenths (86.8 per cent). To State prisons there are 7.4 per cent of commitments; to reformatories, 2.9 per cent; and to State farms, 1.7 per cent—or 12.0 per cent to all State institutions. To Federal prisons are 1.2 per cent of commitments.

PROPORTIONS AT DIFFERENT YEARS

In the table on page 442 is given the percentage distribution of prison inmates and of commitments for the several general classes of penal institutions in 1910 and 1923.

All institutions have an increased percentage of sentenced prisoners within this period with the exception of county institutions. The greatest relative increase is in the case of Federal prisons, a situation due very largely to the enactment of Federal laws as to intoxicating liquors and narcotic drugs. The increase as to State prisons is in large measure simply a reflection of the decrease for county institutions. The notable increase with reformatories, especially indicated with regard to commitments,

PERCENTAGE DISTRIBUTION OF PRISONERS IN DIFFERENT PENAL INSTITUTIONS
AT DIFFERENT YEARS

Class of Institution	Per Cent Distribution			
	Inmates		Commitments	
	1923	1910	1923	1910
Total	100.0	100.0	100.0	100.0
State prisons	56.7	51.0	6.8	4.4
Reformatories	13.2	8.1	2.7	1.2
County jails, workhouses, etc. ...	17.9	31.4	49.4	57.5
Municipal jails, workhouses, etc..	7.9	7.7	40.1	36.8
Federal prisons	4.3	1.7	1.0	0.2

is to a considerable extent to be ascribed to the tendency to-day to afford as far as possible reformative influences rather than punishment to prisoners. The increase in the case of municipal institutions is probably due to the increased complexity of municipal life, including traffic problems, with a greater number of laws and a greater number of violations thereof. Violation of prohibition laws doubtless has a greater or less part in the matter. The decrease with respect to county institutions would seem to indicate one or more of the following things: a reduction in the commission of the lighter offenses or misdemeanors; a wider use of the system of fining instead of jail sentences; a more frequent sentencing of offenders to State institutions rather than to county. Possibly the circumstance that a large part of those in county institutions are from the country may have some effect upon the matter.

PROPORTIONS ACCORDING TO NATURE OF SENTENCE

In the table on page 443 are given the percentage of commitments for the several kinds of sentence according to the class of penal institution concerned, and the percentage distribution for these institutions according to nature of sentence—including sentence of imprisonment only, imprisonment with fine, and imprisonment for nonpayment of fine (1923).

Commitments with sentences to imprisonment only are largely to State penal institutions, and also to Federal penal institutions. Among State institutions reformatories have relatively the highest proportion, though with prisons but little removed. State farms are to be included with State penal institutions. One local

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO DIFFERENT PENAL INSTITUTIONS BY NATURE OF SENTENCE

Class of Institution	Total	Death	Impris- onment Only	Impris- onment and Fine	Impris- onment for Non- payment of Fine	Un- known
Per Cent Distribution by Nature of Sentence						
Total	100.0	—	37.4	14.6	46.9	1.0
Prisons and reformatories	100.0	0.2	93.2	6.4	0.2	—
Federal prisons	100.0	—	84.1	15.9	—	—
State prisons	100.0	0.3	92.6	6.9	0.2	—
Reformatories	100.0	—	98.6	1.2	0.2	—
Jails and workhouses	100.0	—	30.2	15.7	52.9	1.1
State farms	100.0	—	57.5	38.1	4.4	—
County and municipal jails	100.0	—	26.5	15.6	56.3	1.5
County and municipal workhouses ...	100.0	—	39.8	10.7	49.2	0.2
County and municipal farms	100.0	—	16.3	37.1	46.3	0.2
County chain gangs and municipal stockades	100.0	—	37.5	11.0	49.6	1.8
Per Cent Distribution by Class of Institution						
Total	100.0	—	100.0	100.0	100.0	100.0
Prisons and reformatories	11.5	—	28.5	5.0	—	—
Federal prisons	1.2	—	2.7	1.3	—	—
State prisons	7.4	—	18.3	3.5	—	—
Reformatories	2.9	—	7.6	0.2	—	—
Jails and workhouses	88.5	—	71.5	95.0	100.0	100.0
State farms	1.7	—	2.6	4.5	0.2	0.1
County and municipal jails	58.1	—	41.1	62.0	69.9	87.6
County and municipal workhouses ...	20.9	—	22.3	15.3	22.0	5.0
County and municipal farms	4.2	—	1.8	10.5	4.1	1.0
County chain gangs and municipal stockades	3.6	—	3.6	2.7	3.8	6.4

institution has a relatively large proportion of sentences of this kind—county and municipal workhouses. The proportions for other types of penal institutions are relatively smaller.

Sentences of both imprisonment and fine are relatively to the largest extent to State farms and to county and municipal farms, and to a less extent to county and municipal jails and to Federal prisons. Comparatively few such sentences are to State prisons, and hardly any to reformatories.

Imprisonment for nonpayment of fine is practically altogether in county and municipal institutions, especially jails.

Prisoners under sentence of death are mainly in State prisons.

PROPORTIONS ACCORDING TO DIFFERENT GEOGRAPHIC AREAS

In the following table is given the percentage distribution of inmates in and of commitments to penal institutions, according to class of penal institution concerned, for the several geographic divisions of the United States (1923).

PERCENTAGE DISTRIBUTION OF PRISONERS IN DIFFERENT PENAL INSTITUTIONS BY GEOGRAPHIC DIVISIONS

Class of Institution	Per Cent Distribution									
	United States	New England	Middle Atlantic	East North Central	West North Central	South Atlantic	East South Central	West South Central	Mountain	Pacific
	Inmates									
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Federal prisons	4.3	—	—	—	—	—	—	—	—	—
State prisons	56.7	36.8	46.7	49.0	60.8	65.8	70.9	83.5	80.2	69.6
Reformatories	13.2	22.5	13.8	25.7	22.7	—	15.3	5.6	5.1	4.9
State farms	2.0	11.1	—	4.3	—	3.4	—	—	—	—
County jails	7.7	10.6	9.5	4.9	9.9	5.2	6.3	6.0	13.6	18.0
Municipal jails	1.8	—	0.5	0.2	0.2	5.4	0.6	2.2	1.2	7.4
County workhouses	4.8	19.0	15.2	2.8	—	1.2	1.3	—	—	—
Municipal workhouses	5.3	—	13.2	10.8	4.0	2.0	0.6	—	—	—
County farms and chain gangs ..	3.4	—	—	0.1	0.9	16.8	5.7	2.6	—	—
Municipal farms and stockades ..	0.8	—	1.0	2.2	1.5	0.3	—	—	—	—
Class of Institution	Commitments									
	United States	New England	Middle Atlantic	East North Central	West North Central	South Atlantic	East South Central	West South Central	Mountain	Pacific
	Commitments									
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Federal prisons	1.2	—	—	—	—	—	—	—	—	—
State prisons	7.4	3.8	4.3	5.7	8.7	8.7	12.4	15.5	11.8	6.7
Reformatories	2.9	5.1	2.7	4.4	5.2	—	4.1	2.4	1.7	1.2
State farms	1.7	9.8	—	4.2	—	2.0	—	—	—	—
County jails	34.7	38.7	40.1	32.4	45.6	13.5	34.6	37.2	61.9	38.6
Municipal jails	23.4	—	19.7	5.0	13.1	44.9	24.1	36.3	24.5	53.2
County workhouses	8.1	42.5	20.4	4.6	—	1.8	3.6	—	—	—
Municipal workhouses	12.8	—	12.3	34.3	18.7	3.7	11.1	—	—	—
County farms and chain gangs ..	4.0	—	—	0.8	3.8	15.8	10.1	8.5	—	—
Municipal farms and stockades ..	3.8	—	0.5	8.5	4.9	9.5	—	0.1	—	0.3

The smallest proportions of prisoners in State prisons are found in the northeastern parts of the country, especially in New England. The largest proportions are found in the West South Central and Mountain divisions. In the northern sections generally are relatively high proportions of prisoners in reformatories (including State farms). The proportion is especially low in the western parts of the country. County jails are made use of in all sections, particularly the western. County workhouses rather predominate in the northeastern part of the country. Municipal jails and workhouses are to be found in most divisions, containing varying proportions of the prison population. Municipal workhouses are mainly in the Middle Atlantic and East North Central divisions, an area of large cities. County or municipal farms or like institutions prevail especially in the south. Mainly in the south are chain gangs. The western part of the country is without workhouses. The New England section is without municipal institutions. In some southern States

the prisons are largely of the nature of farms. (In several States in the south a large part of prisoners are under county control.)

Variations in the proportions of prisoners in the different types of institutions in the several sections of the country are partly ascribable to such factors as general climatic conditions, density of population, contiguity of urban areas, prevailing industries, and extent of use of State or local institutions for the more serious offenses, in addition to general social attitudes towards prisoners and general penal policies (including purposes of reformatories)—besides differences in terminology.

PROPORTIONS ACCORDING TO CHARACTER OF OFFENSES

In the table on page 446 is given the percentage distribution of commitments to penal institutions according to the several types of penal institutions correlated with different forms of offense (1923).

Over one-third of those committed to State prisons are charged with two offenses against property for gain—larceny and burglary. One-half are charged with these two offenses and with robbery and forgery. One-eighth are charged with homicide. There are likewise relatively large proportions for assault and rape.

Of commitments to reformatories practically one-fourth are for larceny, over one-fifth for burglary, and almost one-tenth for robbery. These three offenses contribute well over one-half of all commitments to reformatories. If forgery is added, almost two-thirds are to be ascribed to these four offenses against property for gain. Rape, prostitution, and homicide also have relatively large proportions.

Somewhat over one-half of commitments to State farms are for drunkenness and violation of liquor laws. Larceny, assault, nonsupport of family, and carrying concealed weapons also have relatively large proportions.

Almost one-half of commitments to county jails are for drunkenness and violation of liquor laws. Relatively large proportions are also found for vagrancy, fraud, and malicious mischief and trespassing.

Over one-half of those committed to municipal jails are charged with drunkenness and disorderly conduct—allied offenses—and almost two-thirds with these two offenses and vagrancy. There are also relatively large proportions for viola-

PERCENTAGE DISTRIBUTION OF COMMITMENTS TO DIFFERENT PENAL INSTITUTIONS ACCORDING TO OFFENSE

Offense	Prisons and Reformatories			Jails and Workhouses					
	Total	Federal Prisons	State Prisons	Reformatories	State Farms, etc.	County Jails	Municipal Jails	County Workhouses, etc.	Municipal Workhouses, etc.
Per Cent Distribution by Offense									
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Drunkenness	25.3	—	0.3	0.8	27.3	27.7	33.7	24.4	26.2
Disorderly conduct	14.8	—	—	0.6	2.0	9.4	20.8	13.7	29.6
Violation of liquor laws	11.0	6.1	8.7	3.9	27.5	19.7	5.3	8.1	3.7
Vagrancy	7.8	—	0.1	1.5	5.4	8.7	8.9	10.1	7.9
Larceny	7.7	5.4	17.9	25.8	10.9	6.6	2.9	9.7	7.5
Assault	3.5	0.3	6.6	2.9	6.3	3.6	2.3	5.1	2.7
Violation of traffic laws	3.2	—	—	0.1	0.6	3.1	4.4	1.9	4.9
Violation of city ordinances	2.8	—	—	—	—	0.7	8.4	2.3	1.9
Burglary	2.6	3.1	17.3	21.5	1.7	0.7	0.2	1.7	0.5
Violation of drug laws	2.0	42.3	1.7	1.2	2.1	1.1	1.1	0.8	3.5
Carrying concealed weapons	1.6	—	0.7	0.7	2.4	1.7	1.1	2.7	1.8
Prostitution	1.4	—	0.3	3.9	0.8	1.1	2.4	1.0	1.3
Fraud	1.3	4.5	1.5	0.9	1.1	2.2	0.5	1.5	0.5
Forgery	1.2	4.3	7.4	7.4	0.4	0.8	0.1	0.6	0.2
Homicide	1.2	0.4	13.1	2.8	0.3	0.2	—	0.4	0.1
Gambling	1.1	—	—	—	0.2	1.2	1.9	1.2	0.6
Robbery	1.1	1.8	8.7	8.2	0.7	0.3	—	0.3	0.1
Malicious mischief and trespassing	1.0	0.1	0.1	0.1	0.3	1.6	1.1	1.1	0.2
Nonsupport or neglect of family	1.0	—	0.8	0.9	2.5	1.0	0.1	2.2	1.4
Rape	0.6	0.1	4.8	3.5	0.6	0.2	—	0.6	—
All other classified offenses	4.9	20.9	8.4	8.7	6.0	4.8	3.3	5.1	3.6
Unclassified and unknown	2.9	10.4	1.6	4.6	0.8	3.5	1.5	5.7	1.8
Per Cent Distribution by Class of Institution									
Total	100.0	1.2	7.4	2.9	1.7	34.7	23.4	12.1	16.6
Drunkenness	100.0	—	0.1	0.1	1.8	38.0	31.2	11.7	17.2
Disorderly conduct	100.0	—	—	0.1	0.2	22.1	33.1	11.2	33.3
Violation of liquor laws	100.0	0.7	5.9	1.0	4.3	62.4	11.2	8.9	5.6
Vagrancy	100.0	—	0.1	0.5	1.2	38.9	26.7	15.7	17.0
Larceny	100.0	0.8	17.1	9.6	2.4	29.8	8.9	15.2	16.1
Assault	100.0	0.1	13.8	2.4	3.1	35.4	15.1	17.4	12.8
Violation of traffic laws	100.0	—	0.1	0.1	0.3	33.9	32.5	7.3	25.7
Violation of city ordinances	100.0	—	—	—	—	8.4	70.7	9.9	11.0
Burglary	100.0	1.5	50.1	24.2	1.1	9.4	1.9	8.2	3.5
Violation of drug laws	100.0	25.1	6.0	1.7	1.8	19.6	12.6	4.7	28.5
Carrying concealed weapons	100.0	—	3.5	1.2	2.6	36.8	16.7	20.6	18.6
Prostitution	100.0	—	1.6	7.8	0.9	27.8	38.7	8.2	15.1
Fraud	100.0	4.0	8.2	1.9	1.4	56.1	8.8	13.5	5.9
Forgery	100.0	4.3	45.1	17.6	0.6	22.7	1.2	5.9	2.6
Homicide	100.0	0.4	81.9	6.8	0.5	5.4	0.5	3.6	0.9
Gambling	100.0	—	0.3	0.1	0.4	37.3	39.6	12.9	9.5
Robbery	100.0	2.1	60.0	21.9	1.2	9.2	0.9	3.5	1.3
Malicious mischief and trespassing	100.0	0.2	0.9	0.4	0.5	55.1	26.2	12.8	3.9
Nonsupport or neglect of family	100.0	—	5.9	2.5	4.2	35.6	2.4	26.3	23.1
Rape	100.0	0.3	55.5	15.9	1.5	13.3	0.6	11.7	1.2
All other classified offenses	100.0	5.2	12.7	5.2	2.1	34.3	15.8	12.6	12.1
Unclassified and unknown	100.0	4.2	4.0	4.5	0.5	41.7	11.8	23.4	9.9

tion of city ordinances (including traffic laws), prostitution, and gambling.

Of commitments to county workhouses and like institutions

(other than jails) one-half are to be attributed to drunkenness, disorderly conduct, and vagrancy. Relatively large proportions are also found for larceny, assault, carrying concealed weapons, nonsupport of family, and fraud. Of commitments to municipal workhouses and like institutions (other than jails) two-thirds are due to drunkenness, disorderly conduct, and vagrancy. Relatively large proportions are also found for violation of drug laws, violation of traffic laws, nonsupport of family, and carrying concealed weapons.

Of commitments to Federal prisons over two-fifths are for violations of drug laws. There are also relatively large proportions for fraud and forgery.

PROPORTION OF FEMALE OFFENDERS IN DIFFERENT INSTITUTIONS

In the following table is given the percentage of females among prison inmates and among commitments to penal institutions, according to the class of institution in which they are confined (1923).

PERCENTAGE OF FEMALE PRISONERS IN DIFFERENT PENAL INSTITUTIONS

Class of Institution	Per Cent of Total	
	Inmates	Commitments
Total	4.8	8.0
Federal prisons	—	—
State prisons	2.2	3.9
Reformatories	12.7	15.1
State farms	10.8	7.5
County jails	5.0	6.9
Municipal jails	9.7	10.6
County workhouses	7.2	6.0
Municipal workhouses	8.8	8.3
County farms and chain gangs	4.2	7.9
Municipal farms and stockades	11.0	11.2

Among prison inmates the highest proportion of female offenders are found in reformatories—or practically one-eighth. The next highest proportion, only a little less, are in municipal farms and stockades and State farms—the latter intended largely as reformatory institutions. Following come the proportions for municipal jails, municipal workhouses, county workhouses, county jails, and county farms and chain gangs. The proportion is lowest of all for State prisons (2.2 per cent). With respect to commitments the institutions rank as follows in the proportions

of female offenders: reformatories, municipal farms and stockades, municipal jails, municipal workhouses, county farms and chain gangs, State farms, county jails, county workhouses, and State prisons.

It is quite creditable that reformatories come first in the treatment of women. In some States without reformatories there is certain hesitation in committing women to penal institutions at all. In all classes of penal institutions there has been a decrease in the proportion of female offenders since 1910, except in the case of reformatories. The relatively high proportion of females in city penal institutions is probably due to the greater frequency of sex offenses in cities, or to a fuller prosecution there for such offenses.

PROPORTIONS OF OFFENDERS IN DIFFERENT INSTITUTIONS ACCORDING TO AGE

In the table on page 449 is given for different ages the percentage of commitments, and for each sex separately, to prisons and reformatories, and jails and workhouses, together with the percentage distribution for each class of institution, according to age (1923).

The population of prisons represents rather the normal population in penal institutions according to age. The larger portion are received at comparatively early years. Two-thirds (66.3 per cent) of all commitments are under thirty-five.

Reformatories have, as we should expect, considerably larger proportions of commitments at the earlier years, the proportions falling sharply with advancing years. Here are found mainly the younger prisoners, three-fourths (74.5 per cent) being under twenty-five years of age, and only 6.6 per cent over thirty-five.

In jails and workhouses, on the other hand, commitments are of a generally older age, there being comparatively few in the earlier years. Only 9.6 per cent are under twenty-one; one-half (51.0 per cent) are from twenty-five to forty-four.

As between the sexes, a considerably larger proportion of males than of females are to be discovered in prisons at all ages, especially in early adult life. Females are found in reformatories generally to a greater extent than males, twice as large a proportion of the former as of the latter being so committed. The differences between the proportions for each sex are greatest in the later years. A larger proportion of females than of males are found in jails and workhouses at all ages.

PERCENTAGE OF COMMITMENTS TO DIFFERENT PENAL INSTITUTIONS BY AGE

Age	Per Cent of Total			Per Cent Distribution		
	Prisons	Re-forma-tories	Jails and Work-houses	Prisons	Re-forma-tories	Jails and Work-houses
Total						
Total	8.6	2.9	88.5	100.0	100.0	100.0
Under 18 years	9.1	18.8	72.1	2.1	13.3	1.7
18 to 20 years	9.3	11.2	79.5	9.5	34.0	7.9
21 to 24 years	11.3	5.3	83.4	19.5	27.2	14.0
25 to 34 years	10.8	1.8	87.4	35.2	17.9	27.6
35 to 44 years	7.6	0.5	91.9	19.9	4.3	23.4
45 to 64 years	5.9	0.4	93.8	11.6	2.1	17.9
65 years and over	6.3	0.4	93.3	1.0	0.2	1.4
Age unknown	1.7	0.5	97.8	1.1	1.0	6.1
Male						
Total	9.0	2.7	88.3	100.0	100.0	100.0
Under 18 years	10.1	18.8	71.1	2.1	13.5	1.5
18 to 20 years	10.3	11.6	78.2	9.4	36.2	7.4
21 to 24 years	12.2	5.1	82.8	19.4	27.5	13.5
25 to 34 years	11.5	1.6	86.9	35.4	16.7	27.4
35 to 44 years	7.8	0.4	91.8	19.9	3.4	23.9
45 to 64 years	6.0	0.3	93.7	11.7	2.0	18.7
65 years and over	6.6	0.4	93.1	1.0	0.2	1.5
Age unknown	1.6	0.3	98.2	1.0	0.5	6.1
Female						
Total	3.6	5.4	91.0	100.0	100.0	100.0
Under 18 years	2.7	18.8	78.4	2.7	12.3	3.1
18 to 20 years	3.0	8.5	88.6	11.6	21.7	13.5
21 to 24 years	4.0	7.2	88.8	21.9	25.7	18.9
25 to 34 years	3.6	4.4	92.0	30.4	24.6	30.4
35 to 44 years	4.0	2.8	93.2	20.0	9.1	18.1
45 to 64 years	3.4	1.7	94.8	8.4	2.8	9.1
65 years and over	—	—	—	—	0.1	0.6
Age unknown	2.8	3.3	93.9	4.9	3.7	6.2

PROPORTIONS OF JUVENILE DELINQUENTS IN DIFFERENT INSTITUTIONS

Juvenile delinquents are for the most part placed in special institutions, as is shown in the following table, which gives the percentage distribution of such persons under eighteen years of

age according to type of penal or correctional institution in which they are found (1923).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS IN DIFFERENT INSTITUTIONS

Class of Institution	Per Cent Distribution
Total	100.0
Special institutions for juvenile delinquents.....	91.2
Prisons and reformatories	6.5
Jails and workhouses	2.3

Of such offenders, over nine-tenths (91.2 per cent) are in special institutions, while 6.5 per cent are in prisons and reformatories and 2.3 per cent in jails and workhouses.¹

Of juvenile delinquents committed to penal or correctional institutions,² almost three-fourths (73.3 per cent) are to special institutions, 7.4 per cent to prisons and reformatories, and almost one-fifth (19.2 per cent) to jails and workhouses (in the last named there being included those committed for nonpayment of fine). If commitments for nonpayment of fine are not included, the respective percentages are 80.2, 8.1, and 11.7.

A somewhat larger proportion of females than of males are committed to special institutions for juvenile delinquents, the percentage for the former being 80.5 and for the latter 71.6 (not indicated in tables). Conversely, the proportion committed to general penal institutions is larger for males. A much larger proportion of white juvenile delinquents than of colored are committed to special institutions. The proportion for the former is practically four-fifths (79.6 per cent) and for the latter one-half (49.4 per cent). (Since 1910 the proportion has increased the more rapidly for colored.)

In the first table on page 451 is given the percentage of juvenile delinquents committed to special institutions for this class according to different ages (1923).

PROPORTIONS ACCORDING TO DIFFERENT GEOGRAPHIC AREAS

In the second table on page 451 is given the percentage of commitments of juvenile delinquents to the several kinds of penal or

¹ Now and then a child is placed in an institution for adults in company with its mother.

² See pp. 451, 452.

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO SPECIAL INSTITUTIONS
BY AGE

Age	Per Cent of Total
Total	73.3
Under 10 years	99.4
10 years	99.6
11 years	99.8
12 years	98.3
13 years	98.3
14 years	95.5
15 years	92.4
16 years	65.4
17 years	31.5

correctional institutions for the different geographic divisions of the country (1923).

PERCENTAGE OF JUVENILE DELINQUENTS COMMITTED TO DIFFERENT INSTITUTIONS
BY GEOGRAPHIC DIVISIONS

Geographic Division	Per Cent of Total		
	Institutions for Juvenile Delinquents	Prisons and Reformatories	Jails and Workhouses
United States	73.3	7.4	19.2
New England	91.0	6.1	2.8
Middle Atlantic	78.7	6.2	15.1
East North Central	78.5	7.7	13.8
West North Central	79.0	9.5	11.4
South Atlantic	60.9	4.7	34.4
East South Central	68.7	8.1	23.2
West South Central	47.2	15.1	37.7
Mountain	76.4	6.4	17.2
Pacific	81.1	4.6	14.3

The smallest proportions of commitments to special institutions for juvenile delinquents are to be found in the southern divisions, the West South Central division having a proportion of less than one-half. In the other divisions the proportion is three-fourths or more, in the New England being over nine-tenths. The proportions committed to prisons and reformatories vary from one-twentieth to one-tenth, except in the West South Central, where it is practically one-sixth. Considerably the highest proportions committed to jails and workhouses are in the southern divisions, being here one-fourth or one-third. In the other divisions the proportion ranges from a little over one-tenth to

a little under one-fifth, except in New England, where it is only 2.8 per cent. One reason for the smaller proportion in the south in special institutions lies in the restricted use of such institutions in that section for Negroes. The proportions for different areas are affected somewhat by the ages at which the law permits commitment to institutions, especially jails.

PROPORTIONS AT DIFFERENT YEARS

In the following table is given the percentage distribution of juvenile delinquents committed to the several kinds of penal or correctional institutions in 1904, 1910, and 1923 (not including commitments for nonpayment of fine).

PERCENTAGE DISTRIBUTION OF JUVENILE DELINQUENTS COMMITTED TO DIFFERENT INSTITUTIONS AT DIFFERENT YEARS

Class of Institution	Per Cent Distribution		
	1923	1910	1904
Total	100.0	100.0	100.0
Institutions for juvenile delinquents	80.2	70.0	66.4
Penal institutions	19.8	30.0	33.6
Prisons and reformatories	8.1	10.3	—
Jails and workhouses	11.7	19.7	—

The proportion sent to special institutions has constantly increased, being in 1904 two-thirds, in 1910 seven-tenths, and in 1923 four-fifths. Since 1910 there has been a notable decrease in the proportion sent to jails and workhouses. Juvenile offenders are being placed more and more in special institutions for themselves, and less and less in general institutions with adults.

In the following table is given the percentage of juvenile delinquents found in special institutions and in prisons and reformatories and jails and workhouses in 1880, 1890, and 1923

PERCENTAGE OF JUVENILE DELINQUENTS IN DIFFERENT INSTITUTIONS AT DIFFERENT YEARS

Year	Per Cent of Total	
	Special Institutions	Prisons and Reformatories and Jails and Workhouses
1880	81.1	18.9
1890	76.7	23.3
1923	91.2	8.8

(figures for intervening years not being of comparable character).

Here also there has been a considerable increase of juvenile delinquents with respect to special institutions. The proportion in them in 1880 was a little over four-fifths (81.1 per cent); in 1890, a little over three-fourths (76.7 per cent); and in 1923, a little over nine-tenths (91.2 per cent).

CHAPTER XLIX

STATE PENAL SYSTEM

COMPREHENSIVE PLAN FOR STATE PENAL INSTITUTIONS

In a fairly complete State penal system there are institutions of different types, or rather an order or grade of institutions, each for a separate class or group of offenders. There should be an institution of reformative and industrial character, where such prisoners as are mentally and physically normal, and as are subject to reformative influences, especially first and occasional offenders, may be engaged to a greater or less extent in industrial activities, both for their vocational training and as a means of assisting in defraying the expenses of the institution. As a department of this, or perhaps as a separate institution, there should be a farm colony, with a farm of rather large size, especially for persons who are not suited for other industrial work, or who are advanced in years (perhaps also with some elementary trades). (There might also be a special institution for young first offenders just above the reform school age, or from about eighteen to about twenty-four.)

There should next be a real "prison," largely of custodial nature, with less emphasis upon industrial and reformative features, and rather for habitual offenders or for vicious, anti-social, incorrigible, or degenerate cases. There should be also an institution for the criminal insane and border-line cases, to be mainly of custodial and hospital nature. If possible there should be a special institution for defective delinquents, especially persons of low mental order, who require treatment to a greater or less extent of a psychopathic nature.

There should be one or more State institutions of the nature of penal colonies or farms, for short-term offenders, especially misdemeanants, such as vagrants, drunkards, drug addicts, etc., superseding to a large extent the local county jail for penal purposes. Such an institution should embrace both reformative and curative features.

There should also be one or more institutions for females,

though on a less extensive scale because of the much smaller number of this sex in penal institutions. If not separate prisons for females, there should be in all penal institutions separate and distinct quarters for them. For the most part the institutions for women should be on the order of farms. Special institutions for juvenile delinquents of either sex are of course to be provided.

There should perhaps, lastly, in a full prison system be some sort of central reception station or clearing house at which prisoners are to remain but a brief period for examination and observation, and from which they are to be drafted to proper institutions. Here there should be, under expert direction, ample laboratory facilities, including facilities for psychiatric, medical, social, and similar investigations. Possibly it is from some such place that the actual sentencing of prisoners should be directed—when it has been learned what general form of treatment is best for them. This central station may perhaps be located at the principal or largest penal institution.

If it is not feasible to have separate institutions for the several classes specified, they should at least have separate quarters, and as far apart as possible.

EXISTING ARRANGEMENTS

A full penal system has hardly had beginning as yet. Most States have to content themselves with one or two, possibly three institutions. When there are more than one, they may be for different classes of offenders, or they may be for different geographical areas.

The most common type of the State penal institution is the prison, often called the penitentiary. Some such institution has usually been created early in a State's history. State reformatories are somewhat less frequent, though their number is increasing. They had introduction into the United States comparatively late in the nineteenth century, New York in 1876 being the first State to create one. They have been intended mainly or largely for persons in late youth or early adult life. They have been in fact somewhat on the order of reform schools for juvenile delinquents, and have to some extent proceeded along with these institutions. The distinction between the prison and the reformatory has not always been strictly insisted upon. The prison is taking over as far as possible any methods or procedure of a "reformatory" nature. In many States, however, a greater or

less attempt is made to draw a line between the types of offenders committed to the respective institutions. The reformatory has had special connection with the indeterminate sentence or parole.

State farms are found at present but to a limited extent, though their number is slowly growing. Only a few States make provision in special and separate institutions for the criminal insane or for mentally defective criminals. The smaller number of States have special institutions for females, Indiana in 1873 being the first; these may in general receive women of any age, but particularly those above the age of juvenile delinquents. The plan of a central reception institution, from which offenders are to be distributed to appropriate institutions according to their needs, is but little developed as yet in the United States, but approach to it is now being made in several States. The juvenile institution or reformatory belongs in a separate category.

SPECIAL INSTITUTIONS FOR JUVENILE DELINQUENTS

Special institutions or reformatories for juvenile offenders were first created in the United States in the early decades of the nineteenth century, then being entirely private undertakings. They were originally called by some such name as "house of refuge," perhaps receiving certain dependent or neglected children as well. New York in 1825 had the first institution of this kind. The next stage was a State institution, the first being in Massachusetts in 1848. The first institution with the express purpose of a "reformatory" seems to have been in Ohio in 1854.

With later years there grew up the conception that education should constitute a vital part or be a vital concomitant in the work of the institutions; and in consequence many became known as "reform schools." For a time, however, there was no full recognition of the import of these two things—reform and education—and repression and constraint were rather the key-notes of the treatment actually administered.

As realization increased of the purposes of the institutions, together with a feeling that the expression "reformatory" or "reform" connoted moral obliquity, and was a sort of branding, the name in some cases was changed to "training schools," "industrial schools," "State schools," or some like term, such designation being regarded as all the more desirable in view of the educational opportunities to be afforded. Occasionally the

term "home," "village," "farm," or some similar expression is employed. These institutions are in general regarded as of correctional nature, rather than of penal. They are also now to a large extent looked upon as of educational character.

Special institutions for juvenile delinquents are now found in all States, some having more than one. Of a total of 93 State institutions, a slightly larger number are for boys than for girls, there being 47 for the former and 38 for the latter—with 8 for both sexes (1923).¹

Because of the conception of juvenile delinquency, children placed in such institutions are sometimes said to be "admitted" to them, rather than "committed" to them. (Special reason for the use of the expression "admitted" is that not infrequently a little time may elapse between action of the juvenile court and their entrance into the institution.)

These institutions are in general open to all child or "juvenile" delinquents—or to offenders during minority or up to a certain age, usually eighteen, sometimes seventeen or sixteen. The age of admission may be very low, possibly eight or ten. In certain cases children are not received who have committed offenses that for adults might be punished with capital punishment or life imprisonment.²

¹Report of Census Bureau—Children under Institutional Care: 1923, 1927. By the Russell Sage Foundation there are listed 79 institutions for delinquent boys, 57 for delinquent girls, and 15 for both sexes—most State institutions, but some local (a small number being private, but aided from public funds). See Margaret Reeves, *Training Schools for Delinquent Girls*, 1929.

²In certain cases the institutions receive dependent children as well.

CHAPTER L

GENERAL INTERNAL ADMINISTRATION

GOVERNMENT OF STATE PENAL INSTITUTIONS

State penal institutions—prisons or reformatories—in the United States are generally in the hands of some central State department or agency. If a State board of control, board of public welfare, or similar board is in charge, it has complete administrative powers, penal institutions being grouped with other public welfare institutions. If a board of charities or a like body exists, its powers are mainly limited to inspection and general oversight. In certain States there are special boards or agencies, perhaps a commissioner, for penal and correctional institutions, having relation to no other institutions. These are sometimes called departments of correction.¹

GENERAL PHYSICAL ARRANGEMENTS

The usual arrangement in American prisons for prisoners under confinement has been the individual cell in a cell house of several levels. It is in general surrounded by a stone wall, with iron-grated doors. Cells are small; when prisons are overcrowded, doubling up of two persons to a cell may be required, though this is forbidden in certain States. Cells are often with poor or defective or unfit sanitary conditions. With the growth of population, and with corresponding growth of the prison population, prison accommodations have in general by no means kept pace. Conditions are in some cases made all the worse in consequence of increased severity of sentences, with longer terms to be served, in consequence of an increased number of crimes requiring prison sentencing, and in consequence of a restricted use of "good time" regulations or the indeterminate sentence or parole. Most prisons are overcrowded.²

¹ Federal prisoners in State and local institutions are under the direct supervision of the Federal Government to but a very slight extent.

² For general conditions in penal institutions, see in particular National Society of Penal Information, Handbook, 1925, 1927, 1929; and reports of

The cellular arrangement for sleeping quarters of prisoners has not a little to condemn it. In its place there has been proposed an open dormitory system. This, however, has certain disadvantages or objectionable features. As a sort of compromise, there might be provided large sleeping rooms to be equipped with partitions between individual beds, or "cubicles," allowing a degree of privacy for each prisoner. For some inmates, however, the cell will remain the most feasible plan. In farm colonies less of the cell arrangement is necessary.

The prison should so far as possible be kept within bounds as to size, preferably not having more than 500 or 600 inmates. In the smaller unit there is less likelihood of mass treatment of prisoners.

Among juvenile reformatories the tendency is away from the "institutional" type of construction, and toward the cottage plan, the more homelike arrangement, and the one more nearly approaching the conditions of normal life.

GENERAL PROVISIONS AFFORDED

In the entire matter of prison equipment and accommodations it is to be remembered that the great problem of the institution is the proper balancing of decent, humanitarian treatment of the prisoner, and of a kind to awaken and keep alive instincts of the better sort, over against the possibility of making his life there too easy or too comfortable or too desirable or too inviting, or too much of a "coddling" nature, or with standards above those of a considerable portion of the population in general.

Prison keepers and attendants should be a rather carefully chosen body. Some measure of special training should be required of them. Political influence should have no part in their selection.

The matter of sanitation and general health in prisons is an ever present problem. The prisoners as a whole are rather below par as to health, while many are ignorant or disregardful of the rules of hygiene. To be coupled with this circumstance are the difficulties involved in guarding health from the close association of a large body of men. Contagious and infectious diseases may break out; while serious chronic ailments of different kinds are liable to prevail. In most prisons hospital facilities are lim-

prison associations, boards of public welfare, etc. See also L. N. Robinson, *Penology in United States*, 1921; J. L. Gillin, *Criminology and Penology*, 1923; E. H. Sutherland, *Criminology*, 1924.

ited. The State department of health should be in touch with the health of prisoners. Efforts should be made as far as possible to remove defects or unfavorable conditions, both physical and mental, during the stay in prison.

Some form of physical exercise or training is desirable in prisons as well as out. In prison there is added value in discipline, in health, and in other respects. Apart from more or less occasional athletic contests among prisoners, systematic physical culture is provided for in but few prisons—in part because of lack of space and equipment. In certain institutions, especially of a reformatory nature for youths, there is military drill to some extent. In general recreation may be allowed an hour or two a day most days of the week, with perhaps longer periods on other days.

Organized recreation facilities consist mainly of athletic events, possibly promoted by some sort of mutual welfare association of prisoners; music, perhaps leading to the formation of a band; moving picture shows or similar entertainment; and library and reading matter.

A recent introduction into prisons consists of provision for mental testing or facilities for psychopathic or psychiatric work, with proper clinical facilities. Such provision is now slowly on the increase. Its significance cannot be wholly measured as yet; in the future work of this nature will be of paramount importance. It will provide the key in determining the proper treatment of individual prisoners. It will help the prison authorities to understand what means of discipline may best be employed in individual cases, and the form of employment that will prove most desirable, while at the same time indicating one's fitness for possible later parole. It may to a greater or less extent be linked up with similar provision in connection with committing courts. (Matters of prison discipline, prison education, prison vocational training, prison labor, and other matters are considered later.)¹

¹In 1926 there were 7,672 persons on the administrative staffs of State prisons and reformatories, or one to every 10.8 prisoners. There were 99 full-time and 59 part-time teachers. There were 28 full-time and 28 part-time psychologists and psychiatrists. Of penal institutions in general (1928) 35.9 per cent have full-time or part-time psychiatrists, and 32.8 per cent full-time or part-time psychologists. With 56.5 per cent there is resort to private physicians. Of juvenile institutions 40.7 per cent have psychiatrists. The total receipts of prisons and reformatories (1926) are \$42,767,017. Prisoners in State and Federal Prisons and Reformatories: 1926, 1929; Proceedings of National Conference of Social Work, 1928, p. 148.

LEGAL STATUS OF PRISONER IN PRISON

The actual status of the convicted offender is not as yet definitely determined by law. He is not a freeman in the usual sense. In a large degree he is a ward of the State, but only in consequence of the deprivation of his liberty. The question as to the status of the prisoner has appeared especially in connection with the matter of contract labor and in connection with certain personal rights.

Conviction of crime, apart from actual incarceration and loss of freedom, generally deprives one of one's right to practice a profession or follow a given occupation. Loss of right of suffrage or of holding office is also a consequence of imprisonment. In a few States a convict is not capable of acting as a witness, while in practically all his testimony is affected by his prison record. In some States imprisonment or conviction of crime constitutes a ground for divorce. So far as a prisoner has lost civic standing, he may have to sue or be sued in civil actions through a representative.

In some cases such disabilities are removed or cease to operate on the expiration of a prison term, or after a specified period. In some cases they may be removed by action of the Chief Executive.

The prisoner, on the other hand, has some distinct rights. His person is entitled to the protection of the law. Even in prison he may not be cruelly or inhumanely treated. He still possesses certain civil rights, though others are suspended during the period of his incarceration. There may be no forfeiture or confiscation of his property; and property may pass through him, even though a guardian may be temporarily required as to such property. (Bills of attainder or corruption of blood are forbidden in the United States.) A prisoner may be convicted and punished for a crime committed while already serving a prison sentence.

PLACE OF DISCIPLINE IN PRISONS

Prison discipline is of primary and fundamental importance in the matter of prison administration—in some respects being the outstanding problem. The situation need but to be visualized to indicate its difficulties. Numbers of men are brought together and kept together entirely against their will, are confined behind stone walls and iron bars, and are denied access to the great

world of freedom lying just beyond to which they know the rest of mankind has access. Discontent and sullenness may arise, perhaps passing into a state of ill will, hatred, and rebelliousness. Kindly approaches on the part of keepers may fail to be responded to, or be without appreciation. Continued resentment and insubmissiveness may be the attitude of many prisoners. Lack of home ties and of the normal relations of life accentuate the difficulties. Guards and keepers, often receiving low pay, may not be of the highest quality, and may be of such character as to induce friction rather than good will.¹

In any event, prison officials are likely to have a difficult position in their control of a large body of convicted men. But discipline must be maintained at all hazards. Nowhere else is it so utterly important and necessary.

NEGATIVE MEANS OF DISCIPLINE

Prison discipline may be thought of as of two kinds: negative and positive. The one involves infliction of discomfort or pain upon prison inmates to compel due submission and obedience; the other seeks to obtain in greater or less degree their good will and coöperation in maintaining order and in providing for the general prison well-being.

Since the middle of the nineteenth century the rigors and severities of prison discipline have been greatly mitigated and softened. There have been general enlightenment and progress upon the subject. There are, however, still prisons here and there with some relic of barbarism as a means of inflicting punishment in the interests of discipline.

To-day the strait-jacket is employed only in extreme cases, and in most prisons hardly at all. Tying up or fastening a prisoner in one position has occasional use, but is avoided whenever possible. Physical chastisement, which is especially objectionable because of its degrading effects, is all but obsolete in the most advanced prisons. The rule of silence, always a bitter experience to the prisoner, has been generally abandoned.

Solitary confinement is often looked upon with favor as a means of dealing with disobedient or recalcitrant prisoners. It is resorted to, however, only when nothing else is possible, and only for serious infraction of prison rules. It seldom lasts longer than a week (except in the case of continued offending), perhaps

¹In nearly all penal institutions there is need of better and better-paid guards.

not longer than part of a day at one time. A limited diet, consisting mainly of bread and water, is a measure of discipline similar to solitary confinement, and often in accompaniment with it. Neither of these methods should have any harmful effects. No means of punishment should be of humiliating character. (For attempted escape the prison term is usually lengthened.)

In the course of time it has been found that the most effective means of securing discipline of a negative nature is through the denial of some privileges or the prolongation of one's term in prison—especially in connection with "good time" regulations or with the indeterminate sentence. Only in those cases where this procedure fails are other methods to be resorted to. Such procedure leads directly to the consideration of positive methods of prison discipline.

POSITIVE METHODS

It is being increasingly realized that there should be higher purposes in prison discipline than those involved in the negative methods of restraint and punishment. Discipline should have some therapeutic value. It should aim not merely at subduing some individual disorder or quelling a local outbreak or meeting a particular disturbance, but should have some permanent beneficial effect upon the prisoner. Even with such objects the general punitive character of the prison remains—its confinement, its discipline, its regularity and monotony, its compulsion of one to the will of another. Loss of freedom will always possess some punitive value; and it is this which constitutes the real punishment. To the largest possible extent discipline should be of individualized character, suited to the nature of each offender. Positive methods of prison discipline are three in number—the grading system, the honor system, and the mutual welfare organization or a limited self-government system.

GRADING SYSTEM

The grading system bears close relation to "good time" regulations, possibly in connection with the indeterminate sentence, the effects of which in reducing the term of a prison sentence have already been considered. The system appeals frankly and at the outset to the prisoner's own interests. In it there may be three divisions, possibly more. In the highest prisoners have a

number of privileges, as better clothing, better living quarters, better food and service (possibly in a separate dining room), permission to let hair or beard grow at will, and freer intercourse with friends in visiting and letter writing. Prisoners in this grade are alone subject to parole. In the lowest grade all these privileges are denied, and hard, unmitigated discipline is the rule. In case there is a State penal institution of lower order, prisoners in this grade may, on further offending, be sent to it. The middle grade is intermediate between the first and the third. To it are generally assigned prisoners on admittance to prison. After a perfect record in a lower grade for a specified period, one is eligible to promotion to a higher. The system is really one of credits for good behavior, perhaps having an effect upon the time of discharge of the prisoner from prison. It consists for the most part in the observance of prison rules and in diligence in prison labor. For given offenses so many "demerits" may be allowed, which may be balanced by so many "merits" for good conduct. Merits may be cancelled or forfeited, or demerits incurred, by wrong behavior, especially serious misdeeds being such acts as an attack upon a prison guard or upon a fellow prisoner. Possibly a certain number of merits or credits have to be earned before discharge is considered, in case one is otherwise eligible to it. The whole system has an important part in making prisoners realize the effects of good and of bad behavior, and in their general "socialization."

"Good time" regulations have been criticized on several grounds. They are sometimes looked upon as in greater or less degree softening the prison sentence duly imposed by law. They are sometimes felt to be of too mechanical a character for the best results. They are sometimes believed to involve insufficient examination and oversight. But whatever the shortcomings of these regulations, and whatever the improvements they will have to undergo, the effects upon prison discipline are so great that the principle at least is not likely to be abandoned.¹

The grading system for prisoners was attempted in a small way not far after the beginning of the nineteenth century, and was given formal recognition in New York in 1876; but only in the present century has it had fairly wide introduction. There is more or less variation among methods in different prisons. In prisons where a formal grading system is not in use, disciplinary measures are in considerable degree based upon the system of allowing or withdrawing privileges.

¹ See Chapter XLI.

HONOR SYSTEM

The honor system is rather of the nature of an informal, personal, fiduciary relation existing between the warden or sub-warden of a prison and the prisoner, according to which the latter is allowed to do certain things, especially out of the sight of the former, or even outside the prison itself, which are not permitted to prisoners in general. The relation is essentially one of trust, and is largely based upon the confidence established toward the prisoner. The trust is always of limited character; the prisoner is always under greater or less surveillance. Sometimes such a prisoner is called a "trusty." In most cases the honor system applies to a limited number of prisoners whom the prison administration has seen fit to leave on their honor as to certain matters. Sometimes such prisoners have been allowed to leave prison for the day to engage in some form of outside work. In a restricted number of cases the arrangement has been of more formal character, applying to whole groups of prisoners, possibly now and then to the majority of them. A prisoner on honor who tries to use his position to escape generally has his prison term lengthened. The worst evil of the system is that the "trusty" is often looked upon by other prisoners with suspicion and aversion, perhaps as a sort of decoy.

The honor system has not had extensive trial in the United States as a whole. It has been fairly successful, especially when applied to a small number, though it has recorded failures as well. It is doubtless to-day of diminishing importance in relation to other methods of discipline; it may have its greatest usefulness in connection with them.

PLAN OF MUTUAL WELFARE ASSOCIATIONS

A mutual welfare association and a self-government league of prisoners are similar in purposes and activities, though in the latter a greater degree of responsibility is felt to be placed upon the prisoners and a larger participation afforded in activities concerning themselves. The appellations given to these organizations are several.

Self-government, as its name implies, is a system whereby the prisoner is permitted to have a part in the direction of the internal arrangements of the prison, so far as they do not affect the real authority or control of those fundamentally and legally responsible for its administration. Self-government in

fact exists in a limited degree, and after all in but shadowy form. General prison restraint and surveillance continue, whatever the extent of prison self-government; and there is never infringement upon the prerogatives and powers of the actual management.

The sphere of a mutual welfare association or of a self-government league relates for the most part to measures of general welfare—education, recreation, entertainments, and other matters bearing upon prison life. The principle involved in the procedure is the providing for the prisoners of a miniature world, in which there is a modicum of self-expression, and a voice in the determination of certain affairs. Through it is to be shown how normal people in a large world get on, and how the game is played in ordinary life. The prisoner is made to see how the interests of one become the interests of all. A group spirit is inculcated, and a recognition of the rights of others developed.

In addition, the affairs of the league or association afford the prisoners a helpful departure from the deadening routine of prison life, and provide a wholesome outlet for their energies. The prisoners are given something to think about and to work for. In a measure they have something of their own. All prisoners may not be expected to benefit from prison self-government or mutual welfare leagues. A certain portion are thus to be denied participation in such activities. This is especially true of those who are sub-normal mentally or are hardened criminals. Certain prisoners, moreover, by the nature of their offense or by serious infraction of prison regulations are barred, as persons under death sentence, or persons who have assaulted a prison officer, or who have used a deadly weapon in assaulting another inmate, or who have refused to work or have gone on strike.

In the organization of a league or association there may be an election of delegates to make rules and formulate plans of action. Perhaps, too, a general board of directors may be elected. Committees may be created to attend to such matters as membership, judiciary, athletics, education, music, sanitation, hygiene, visitors, entertainment, family relief, industries, employment (outside prison), etc. Punishment for violation of league rules may be suspension from membership, with possible added penalties of withdrawal of privileges as to recreation, entertainments, visits from friends, etc.

Greatest usefulness may be found in connection with athletics, entertainment, cleaning of grounds, etc. Sometimes prisoners are allowed to set up a fund, especially from their earnings

from labor, which may be used to aid indigent members of a prisoner's family or infirm prisoners, to pay prison teachers for their services, to pay the expenses of a prisoner to his home to visit sick relatives, or to pay for burial expenses, additional means of recreation, etc.

RESULTS OF MUTUAL WELFARE ASSOCIATIONS

The plan of a mutual welfare association or self-government league has been tried out in varying degrees in the United States from early times. In some prisons, especially those known as reformatories, there have been at one time or another mutual welfare leagues of some sort, with greater or less powers. There are but a limited number in existence at present.

Sometimes no small good has been effected both with prisoners and with the institution itself. Better discipline, less quarreling, and larger coöperation with the prison management have resulted. When there has been considerable success, this has been generally due to the outstanding ability, perseverance, big-heartedness, sympathy, and tact of its promoter—or the right kind of official guidance. Success may be said to be in direct ratio to the existence of these qualities. Where failure has been the issue, it has been attributable, apart from the absence of the qualities mentioned, to such general unfitness, including low mental levels, on the part of the prisoners as to make any plans of this kind impracticable; to the playing of politics; to the exploitation of weaker prisoners by stronger; to unwillingness of some prisoners to defer to the authority of other prisoners; to lack of position of "officers" of prisoners' association to deal directly with offenders against the rules; and to other factors. A self-government league or mutual welfare society is more likely to do well just after it is organized, when its procedure appears to be somewhat in contrast with previous seemingly harsh conditions; difficulties may appear when the novelty has worn off. Much also depends upon the length of sentence of different prisoners.

PLACE OF EDUCATION IN PRISONS

Prisoners are in particular need of education and of the benefits which it confers. We have already seen to what restricted extent education prevails among them, and how a not inconsiderable proportion are with education of the most limited kind.

Apart from its general benefits, and apart from its help in fitting one for life, education in prisons is of no small disciplinary value. It furnishes some break to the day-long routine and monotony, turns the attention of prisoners to intellectual activities, gives them something to occupy their minds, and makes them more suitable for discharge in case this is open to them. For not a few the prison furnishes an opportunity for education which has previously been denied or neglected.

PRESENT PROVISIONS FOR EDUCATION

The first form of education to be offered prisoners in American prisons was religious in nature. This was provided in some limited degree almost from the beginning in certain prisons. Education of more general character, especially such as involved legal recognition, was introduced before the middle of the nineteenth century. Though with time it has had wider and wider adoption, it to-day has by no means the foundation and the general use that it should.

Present educational facilities vary greatly in different penal institutions. In some they can be regarded as hardly more than nominal; in others they are to be characterized as fairly good. Provision for education is found least of all in real "prisons," perhaps in well under half. It is found in the larger number of general reformatories, and in virtually all juvenile reformatories and reform schools. In other words, the more a penal institution approaches a prison, the less likely is it to have facilities for education; the more it is of a reformatory type, or the more it is designed for youths, the more likely is it to have them. The proportion of prisoners attending school varies in different institutions, perhaps ranging, for adults, from one-fifth to two-fifths.

In most institutions there is one civilian teacher, and one or more convict teachers. The nearer an institution approaches a reformatory, the greater is the extent of civilian teaching likely to be. Qualifications of instructors are for the most part low. Few are anything like adequately trained. Where convict teachers are employed, they often command little respect. In addition, there is placed too heavy a load upon the small number of persons at all capable of teaching.

The time devoted to instruction is limited. The maximum number of hours in one day for the purpose is three or four. The average is possibly about two and a half. Often teaching

is done at evening time. Usually teaching is only on every other day. In some cases it continues for only about half the year; in others it lasts through most of the year. In reform schools teaching is more on the order of that in regular schools. Here there may be half-day or all-day sessions, classroom work perhaps alternating with shop work.

Instruction is generally of an elementary order. As a rule it ranges from the fourth to the eighth grade. In some cases education is compulsory. Few of the prisoner pupils ever get as far as the eighth grade in their studies. The subjects taught are for the most part reading and writing, with possibly some civics, and possibly some subjects of a commercial nature, besides some music. In the institutions which are in part at least of reformatory nature education is better and of larger range. In juvenile reformatories, which in large measure are of an educational character, a common school education is generally afforded, and to some extent a high school education.

Instruction in penal institutions is frequently but little adapted to the actual needs of the pupils. It is sometimes of an antiquated nature. Classification of pupils can in general go but a short way. Under the circumstances no high order of teaching is to be expected—nor any great amount of enthusiasm on the part of the pupils.

DESIRABLE PLAN FOR EDUCATION

The limited success of prison schools is not entirely the fault of the prison authorities, though in some cases there could well be given more serious attention to the matter. The authorities have in general all they can take care of in the matter of administering the prison, and are in little position to provide full and satisfactory courses of instruction for their nondescript collection of pupils.

Perhaps the greatest incentive to developing interest in education in prison, and thus to making it more effective, is to connect schooling with rules as to good behavior and as to eligibility to parole, especially for prisoners in youth and early adult life. Prisoners should not receive full merits or be discharged from prison unless they take advantage of their educational opportunities, possibly a certain amount of schooling being set down as a minimum requirement. The tendency in this direction is increasing to-day.¹

¹Earnings of prisoners, if fair wages were paid for prison labor, could possibly be used to some extent to help pay the costs of education, espe-

If education in prisons is to be made really effective, it will have to receive far more serious consideration, and be vested with far greater importance. Perhaps the greatest usefulness can be reached when the work is in connection with the State department of education, possibly as a special bureau, as is the tendency with juvenile reformatories. There may also be some good results through the extension activities of some outside educational institution.

MEANS OF EDUCATION OTHER THAN SCHOOLING

Libraries and reading matter also constitute an element in the educative process for prisoners. Such are found in most penal institutions, though the selection of books and of periodical literature is not always a wise one, and is sometimes poorly attended to. A few prisons and many reformatories have institution papers prepared and printed by inmates.

Education in prisons is to include moral and religious education—with preaching or church services, Sunday Schools, young people's societies, etc. This may be carried on in part by prison officials, and in part by interested parties from outside. Much remains here to be done by outside organization and enterprise, in coöperation with prison management.

PLACE OF VOCATIONAL TRAINING IN PRISONS

A most important place in all prison systems should be given to vocational training, to be of effect upon the life of the prisoner after his discharge from prison, and to fit him for industrial efficiency and self-support in the outside world. It should afford him both preparation and a certain degree of skill which may prove of some practical avail at a later day. It should also be of present disciplinary value in inculcating habits of industry, and in developing a right attitude in the prisoner towards his place in industrial activity.

DIFFICULTIES IN VOCATIONAL TRAINING

Vocational training has been of but limited extent in American prisons. In hardly more than one-third of penal institutions, cially in getting suitable teachers. This might at least awaken a greater concern in education on the part of some. The question remains how far it is the sole duty of the state to provide proper instruction.

mostly reformatories, has there been a formal attempt at it. In relatively few has it received really scientific attention.

Nor can much be claimed in the way of achievements in the matter. This is to be charged only in small degree to prison administration. It can not be expected with all the duties it has, including provision for actual productive labor on the part of prisoners, to engage extensively in affording a training for the future in the outside world, desirable as this might be. The main trouble lies with the nature and disposition of the convicts themselves. Though the undertaking would be for their benefit, they generally lack interest in it, often preferring idleness instead. They constitute an unstable industrial element, having no great predilection for any one calling. Some want no trade, or are unwilling to give the necessary application to secure one. There is not infrequently a feeling that any kind of task is simply added punishment. The limited number of trades available, the curtailed equipment and facilities for learning trades, and the necessary subordination of vocational training to other features of prison life, together with frequent changes in the personnel of the learners, are all factors militating against any adequate provision in this respect.

A large proportion of the prison population, furthermore, is unfitted mentally or physically for any considerable degree of vocational training. It has been estimated that about one-fifth of prisoners are incapable of real training; about two-fifths, of some degree of useful training; about one-third, of average trade ability; one-sixteenth, of high clerical ability; and 1 per cent, of foreman ability. Perhaps from one-eighth to one-fifth are capable of learning a skilled vocation. Possibly one-fourth or one-third could do ordinary factory work.

Work carried on by prisoners, whether for its vocational values or for its productive returns, seems to have little effect upon their general industrial efficiency. Four-fifths are said to be as unskilled in industrial processes at the end of their sojourn in prison as at the beginning. Only a small proportion, perhaps not one-fourth or even one-tenth, of prisoners follow in after life the trade learned in prison.

PRESENT PROVISIONS FOR VOCATIONAL TRAINING

The trades actually taught in prison are few. To a considerable extent they are in connection with the performance of regular prison labor, some of which is of greater or less vocational value.

Leading occupations of this character are carpentry, painting, shoemaking, tailoring, sewing, baking, plumbing, bricklaying, plastering, barbering, printing, laundry work, domestic service, repair and upkeep work, foundry and machine work, welding, vulcanizing, and a few commercial subjects, as shorthand and stenography. With women needlework has most often been resorted to. Possibly music may be added. In few of these trades is there any full training or adequate equipment. Some are rather acquired as a result of practical experience along certain lines. There has been little standardization either as to processes or as to time required. In juvenile reformatories the situation is in general relatively much better. There may be a considerable number of trades offered. The chief ones for boys are carpentry, tailoring, baking, shoemaking, painting, plastering, etc.; and for girls, home making, domestic science, and more or less sewing.

AGRICULTURE AS SPECIAL VOCATION

To be included as a form of vocational training is agriculture, along with gardening, fruit raising, dairying, and live stock raising. In it inhere several advantages. It permits outdoor work and contact with nature, conducive themselves to physical exercise and good health and to wholesome attitudes. It is available for nearly all prisoners unless seriously disabled or unfit for labor. It directly reduces the costs of maintenance of the institution.

On the other hand, there exist serious difficulties with respect to the carrying on of agricultural operations. Many prisoners are from the city, and do not care for farming as a vocation. In addition, opportunities for escape are more numerous in occupations of this character. The work is seasonal, necessitating some other provision for a part of the year, or at any time during the year when the weather is inclement—though possibly this time might well be given to education. Work of prisoners outside as regular farm hands is little likely to meet success because of the general distrust of farmers toward such labor.

PRISON LABOR

Prison labor is of such importance that it will have to receive consideration to itself.

CHAPTER LI

PRISON LABOR

STANDING AND ASPECTS OF PRISON LABOR

The matter of prison labor is an ever pressing problem in connection with prisons. Its supreme importance rises from two considerations. One is the putting of the prison inmates at productive labor, and the consequent reduction of the cost to the State for the upkeep of the prison. The second is the keeping of the prison population from the intolerable evil of continuous idleness, deteriorating as it is in every way.

In the past in this country the stay of the prisoner in prison was largely one of inaction, though there were early periods when heavy labor was exacted. Labor was primarily introduced as an added punishment (confinement "at hard labor"), with little attention given to its nature or to its effects. This labor may even have been of useless character. Labor was also resorted to as a disciplinary measure, the general attitude toward it being little changed. The value of labor as a means of physical exercise may also be included in these earlier notions.

A different conception in the development of prison labor came when it was realized that it had remunerative possibilities—either in assisting in defraying the cost of prisons, or in helping pay the expenses of the prisoner's confinement, or in bringing to the State a new and distinct form of revenue—all a result of some payment to the State for the prisoner's services.

Another later discovery was in the vocational values lying in the industrial training to be afforded the prisoner, which could perhaps in some measure be of advantage to him when he had left the prison.

The last stage in the development of prison labor arrived in the realization that for his labor while in prison some form of compensation might be given directly to the prisoner. Not only would this prove an incentive to more efficient and more productive labor on his part, and a means for furthering his self-respect, but would enable him to save up something against the

day of his discharge, or allow him to contribute something toward the support of his dependent family.

In addition, as a final conception, a part of a prisoner's earnings might be devoted to purposes of restitution for an injury to a private person—so far as monetary redress might be proper, and so far as a place for this principle might be found in the criminal law.

The matter of prison labor is a peculiar problem. There are four aspects, or four considerations involved, which must be given regard in any treatment of the subject: (1) the interests of the public at large, especially as they are affected by the introduction upon the general market of products of prison labor; (2) the interests of the State administration, especially as they relate to the costs involved in the maintenance of its prisons; (3) the interests of the prison, especially as they relate to the question of discipline; and (4) the interests of the prisoner, especially as they affect his health, vocational preparation, contribution to support of self and of family, and social attitudes. Some of these interests, it is needless to say, are very likely to prove conflicting. These conflicts are at the source of the problem of prison labor.¹

INTERNAL DIFFICULTIES

In the practical conduct of prison labor, serious difficulties are met at the outset, which remain in greater or less degree during its operations. These difficulties may be considered as of two kinds—internal and external. The one has to do with the actual production of goods; the other, with their marketing after they have been produced.

The internal difficulties in connection with prison labor are always pronounced. The labor supply itself, to begin with, is of a comparatively low industrial order. Considerably over one-half, possibly two-thirds, of convicts are unskilled or untrained or without definite calling. Possibly three-fourths or more are to be set down as being not more than semi-skilled as to industrial processes. Only a small proportion, perhaps in general less than one-tenth, can be said to have a relatively high, or even average, degree of industrial preparation, skill, and efficiency. Even out-

¹On conditions as to prison labor, see in particular publications of National Committee on Prisons and Prison Labor. See also *Journal of American Institute of Criminal Law and Criminology*, Feb., 1925, Feb., Aug., 1927; E. S. Whitin, *Penal Servitude*, 1912.

side prison a large proportion of this type would have difficulty getting steady employment. In addition, many prisoners are physically, mentally, or temperamentally unsuited for effective work. A considerable number are physically broken or diseased; a considerable number are below par in mind, ranging from the constitutionally psychopathic to the mentally defective. With a limited range of occupations, with little diversification of manufacture, and with a restricted directing staff, full regard can not be given to previous training or to special aptitudes. It has been estimated that approximately three-fifths of prison inmates are physically or mentally capable of effective labor. Of these about one-fourth are needed for tasks about the prison. There are thus available less than one-half for really efficient productive employment. With allowance for farm and road work, the proportion may be as low as one-fourth.¹ The exact productiveness of prison labor in general remains to be discovered.

Even those of potential industrial productivity are likely in prison to develop a spirit, on the one hand, of indifference, listlessness, and machine-like application, or, on the other hand, of irritability or restlessness. Very few can be expected to have any considerable incentive for good work—unless perhaps there exists a substantial wage compensation. Many are likely to do as little work as possible. Now and then there may be deliberate efforts to injure or destroy material or machinery.

Labor under such circumstances must be characterized by relative inefficiency and restricted output. Because of their limited industrial preparation and fitness and because of their attitude in the matter in general, the labor of prisoners is far below par, perhaps only about one-half or one-third as productive as free labor.

There are other factors which lower still further the productive power of prison labor. An efficient and honest foreman or director is not always easy to secure to carry on the work. The pay is not great, and surroundings little attractive. Equipment can not often be expected to be of the highest order, or complete, or up-to-date, or standardized. Machinery may be antiquated or defective. Materials may not be the best or most suitable to be obtained. Lighting and sanitary facilities may be unsatisfactory.² Quarters used for work may be small and overcrowded. Industries may be overmanned. There may be wastes of various

¹ *Monthly Labor Review*, Sept., 1924, p. 204.

² It was once feared that prison-made goods were produced largely under unhygienic conditions.

kinds. Now and then politics lays its baneful hand upon the entire situation.

Finally, it must be borne in mind throughout that whatever tendencies prison labor may take, or whatever features it may have, the discipline of the institution must remain intact and unimpaired. It is ever the uppermost consideration. There must be constant guard that opportunities of escape are not afforded. By the nature of the case, prison order must take precedence over efficient production.

EXTERNAL DIFFICULTIES

The external difficulties in connection with prison labor are of different order, but perhaps of even greater moment. Prison-made goods on their entrance upon the market find there goods from the hands of normal free labor. A competition is thus forced between the two. Protests arise from those concerned in the production of non-prison articles, from employers and employees alike.

The prison has advantages in production costs which are literally beyond the powers of the outside independent manufacturer. It has its abundant supply of low-priced labor—possibly paid but a nominal wage. It has no overhead costs to meet; no interest charges to pay on capital invested in plant or equipment; no charges for depreciation; no taxes; and possibly no expense for heat, light, or power.¹ The outside manufacturer is in no position to meet such conditions of production. The competition created is declared to be unfair and vicious, industry in a given field unstabilized, and the market for a particular industry demoralized. Undercutting with prison-made articles can be carried far. Prices may fall, not only below a fair margin of profit, but below the actual cost of production. Sometimes competition with prison-made articles may prove out of the question, and the market for certain goods given over to prison labor. Free labor asserts that a living wage is out of the question alongside convict labor.

The question of prison labor exists but to a slight extent in connection with juvenile reformatories. At one time the element of profit was an important consideration in the work carried on, which was somewhat of the manner of regular prison labor. At

¹ Anything like exact comparisons between the costs of prison-made goods and costs of ordinary goods is very difficult, prisons having in general little in the way of cost analyses.

present occupations and trades are rather chosen for their constructive or vocational values.

DIFFERENT FORMS OF PRISON LABOR

The demand for prison labor in the United States became articulate in the second quarter of the nineteenth century, and the more pronounced in Civil War times. Since then it has received ever greater public consideration. In earlier days, before there existed the present understanding of prison labor, friends of prisoners were allowed at times to provide tools and materials; but to-day the State, whether acting through itself or through outside parties, holds itself responsible for and attends to the entire matter.

Prison labor has assumed different forms since its commercial value to the State has been realized. There have been six distinct systems recognized in the United States. These, in the order of the increasing degree of State control in them, are: lease, contract, piece price, public account, State use, and public works and ways.

Under the lease system of prison labor the lessee has general charge and control of the State's prisoners, feeding, clothing, and guarding them, and paying the State so much for the use of their labor. The State has power to make general rules and to inspect conditions of work. The only structures necessary under this system for the State to provide are those for temporary detention and for prisoners incapable of work. The essential thing about the lease system is that the State surrenders control of its wards.

From ethical considerations and on constitutional grounds (involuntary servitude being forbidden except as a means of punishment), the procedure involved in the lease system has been seriously questioned. The constitutional aspects have never been fully determined. The system comes near being what is known as peonage, or the transfer into private hands of persons charged with debt till it is worked out by personal labor. It has been susceptible of much abuse, and has awakened much public hostility.

The next higher stage in prison labor, so far as State control is concerned, is the contract system. Here the State, as before, contracts out for the use of the labor of its prisoners, but it retains custody over them and maintains them. It provides the workshop (and possibly also the power), guards, and general

sustenance. The contractor furnishes the machinery and material (perhaps the equipment and power), superintends the work, and attends to the marketing of the finished product. He pays so much a day for the use of the labor of the prisoners. The State can regulate all conditions of work and can limit the amount. (The work is carried on in or near the prison.)

The contract system is the easy way for the disposition of prison labor. It permits the State to sell the man power of its otherwise idle convicts, with practically little trouble to itself, while adding measurably to the prison revenues. But there are decided disadvantages in the plan. Primary concern may be concentrated upon the financial returns from the arrangement rather than upon the welfare of the prisoners, and possible evils may escape recognition. Only a limited number of industries, perhaps only two or three, are feasible, with the consequent lessening of any possible vocational values. The very fact of the small number of industries intensifies the competition of their products in the outside market.

The arrangement is often a profitable one to the contractor. His contract may last from one or two years to ten years, during which time he is enabled to carry on a protracted enterprise. He may have contracts for the same article in several different States, perhaps six or eight. He pays from 50 cents to \$1.50 a day for labor, perhaps 75 cents or \$1.00 a day on the average for able-bodied labor, and a smaller sum for less capable labor. This is a wage payment only one-fourth or one-third of what he would have to pay in the open market (with possibly a certain allowance for relatively less efficiency on the part of prison labor). He is largely free from overhead expenses, interest charges on investment, charges for depreciation, rent, taxes, and often expenses for heat and light, and perhaps power as well. Even though his work is at times precarious and under changing conditions, and he may have at times to continue his payments to the State when his labor is under forced idleness; yet on the whole his venture should prove of a decidedly remunerative character to him. So advantageous has the system proved to the contractor that he has been known to exert himself with great zeal to secure or retain his privilege.

The great objection to the contract system remains that it is without constructive value, and that by it prison labor is being exploited for private interests. Opposition has steadily grown against the system. In the Constitutions of certain States this system or the lease system is directly forbidden.

The piece price system is a variation, but for the better, upon the contract plan. Instead of paying directly for his labor, the outside manufacturer pays an agreed price for each article produced, he providing the materials. The State thus retains an even greater control over its wards, a control, in fact, complete. Objections to this arrangement remain, but they are less serious than the objections to the contract system.

In the public account system the State parts company entirely with outside parties, and enters the field as a manufacturer in its own name and upon its own responsibility. Apart from the question of any possible conflict between the financial interests of the State and the welfare of the prisoners, the chief problem here is as to whether the State has the requisite qualifications, or the requisite knowledge, training, and experience to carry on such business operations, and as to whether the State is prepared to compete directly with private firms in the open market.

The State use system is the public account system, but in a supposedly very restricted field—mainly in the use of manufactured articles by State institutions alone—the State thus being saved the expense of buying them in the open market, and reducing the field of outside competition. The plan has many advantages, though the output must of course remain very limited.

The system of prison labor in public works and ways is the application of the State use principle, not to the manufacture of articles, but to the construction and upkeep of public institutions and property, including road building, and also general reclamation work. This plan is largely unobjectionable so far as it goes, though it can not always provide work for all the prisoners. The outdoor life afforded is of special advantage, though it means increased difficulty in the oversight and discipline of the prisoners.¹

DEVELOPMENT OF DIFFERENT FORMS

The lease system has been known from the early nineteenth century; but it has had most extensive use in the southern States as a sequel to Civil War conditions. Of recent years it has been employed chiefly in connection with mining and plantation work. Because of the rapidly growing sentiment against it, the lease system has now all but disappeared. Of recent years it has had a foothold in only two or three States, and is at present virtually abandoned in these.

¹In some cases prison-made goods in general are disposed of through contractors.

The contract system of prison labor was probably the first to be adopted. Early the contractor approached the prison with a bonus for its labor. Up to very recent years the contract system had a strong position in American prisons, but the proportion of States now making use of it is dwindling. To-day it is found to a greater or less extent in almost half of the States, mostly the smaller States. The contract system, too, as already indicated, is feeling the effects of public sentiment. Through the Federal law placing prison-made articles under the regulations of the State which they enter, it will be dealt a heavy blow.

The piece price system, though employed here and there at earlier times, came into considerable use rather in the last quarter of the nineteenth century. To-day it can be said to be doing little more than holding its own, if not, in fact, suffering an actual decline. The piece price system is now found in about the same number of States as the contract system. Of the total value of products created under these two systems, over two-fifths is made in three States.

The public account system, also known in earlier days, is having most pronounced use at the present time. It is now found in almost all States. In a few States the public account system of prison labor has been asked for to meet the situation created by a private monopoly or trust.¹

The State use and the public works and ways systems, though in some slight use from the beginning, have had their greatest development in comparatively recent years. The State use system has now been introduced to a greater or less extent into all the States, and is having wider and wider employment. The system of public ways and works has not made so rapid an advance. It is employed in a little over one-half the States. In certain States these systems are the only ones permitted.

MOVEMENT OF DIFFERENT FORMS

In the table on page 481 is shown the percentage distribution of prisoners according to the kind of prison labor engaged in, in 1885, 1895, 1905, 1914, and 1923.²

From this table is apparent the steady decline alike of the lease and of the contract system, the former now having gone.

¹ In certain States the public account system was begun early, but owing to financial difficulties was superseded by the contract system.

² The data following are largely from Bulletin of Bureau of Labor Statistics, No. 372, 1925. See also *Monthly Labor Review*, April, 1924, p. 1.

PERCENTAGE DISTRIBUTION OF PRISONERS ACCORDING TO FORM OF LABOR AT DIFFERENT YEARS

Form of Labor	Per Cent Distribution				
	1885	1895	1905	1914	1923
Lease	26	19	9	4	—
Contract	40	34	36	26	12
Piece Price	8	14	8	6	7
Public Account	23	33	21	31	26
State Use			18	22	36
Public Ways and Works			8	11	19

The piece price system has also decreased since 1895. In the entire period there has been a great increase jointly in the public account, State use, and public ways and works systems—all strictly under State direction. The proportion of prisoners so engaged has practically tripled, or from one-fourth (26 per cent) to four-fifths (81 per cent). Since 1905 there has been a considerable increase in the proportions for the State use and public works and ways systems, and a certain increase for the public account system, though a decline since 1914 for the latter. The proportion of prisoners engaged in road work in this period increased from less than 2 per cent to one-eighth.

PROPORTION OF PRISONERS IN PRISON LABOR

In 1885 there were 75 per cent of prisoners engaged in productive labor; in 1895, 72 per cent; in 1905, 65 per cent; and in 1923, 61 per cent. The reduction in this period is in part probably a result of present trends. It is doubtless attributable largely to a decrease among prisons having the contract system. It is evident, none the less, that the prisons are making but little progress in providing labor for the entire number of their inmates.

In addition to the 61 per cent of prisoners who were actually employed at some form of productive labor in 1923, there were 30 per cent who were engaged in domestic prison duties, as cooking, washing, etc. On the sick list were 3 per cent. The remainder (6 per cent) were idle, no work being available for them, or their confinement being without labor. Most prisons do not have enough work for all.

The proportion engaged in productive labor varies considerably in different States. It may range at different times from about one-third to four-fifths.

Over one-half of employed prisoners are in work of public character, or for the benefit of the State, one-third being employed in the production of articles for State consumption. In 1923 there were 36 per cent engaged at State use work, 19 per cent at public ways and works, 26 per cent at public account, 7 per cent at piece price, and 12 per cent at contract.

In some prisons to-day more than one system of prison labor may be in use, or perhaps a combination of two or more systems. Certain articles in different prisons are in part made under one system, and in part under another. A number of States fuse the public account and State use systems.

INDUSTRIAL EQUIPMENT OF PRISONS

The industrial equipment and facilities of different prisons in the United States vary greatly. In some these are of high class and modern character; in others they are antiquated and of decidedly inferior type. In an increasing number of States a central State purchasing agency is availed of for equipment and material.

In some lines provision is inadequate or meager. Shops are often overcrowded, and industries overmanned; but even thus a number of convicts are compelled to remain idle. In a few cases industrial superintendents are able and experienced; but in most they are with limited skill.¹

Hours of labor in prison for the most part conform to hours of labor outside. In the majority of prisons convicts work eight hours or less a day. In possibly one-fourth they work more than eight hours.

CHARACTER OF PRODUCTS OF PRISON LABOR

Articles produced in prison are for the most part of relatively simple order, though there are some demanding a rather high degree of skill or workmanship. In the selection of articles to be made much depends upon the accessibility or availability of materials; upon whether one or more systems is in use; upon the general industrial character of the prisoners; and upon the nature of local competition.

The number of different kinds of articles made in the different penal institutions of the country varies not a little. The number

¹In some prisons, probably a decreasing number, politics has had influence, and has interfered with successful management.

of departments maintained or the number of industries carried on is in general restricted. Most institutions have five or six; few have over ten or twelve. Certain articles are limited almost altogether to a few prisons.

Articles of all kinds produced are of not a few varieties. For the most part they consist of farm, garden, dairy, and live stock products; different articles of clothing or wearing apparel (especially work shirts, and including shoes); certain articles of furniture (especially chairs); certain household utensils and accouterments (especially brooms and brushes, mattresses, bags, and stoves); articles on the order of tags; soap; printed matter; farm supplies (especially harness and binder twine); textile work, needlework, and linen work (including both fabricating and repairing); work with brick or stone; lumber work; coal mining; road and construction work; repair and shop work (including carpentry, blacksmithing, tinsmithing, etc.), and general employment about the prison, or prison upkeep.

Also carried on in prisons, though not given direct monetary value, are laundry work, hospital attendance, cooking, cleaning, and other forms of house work or domestic work—together with certain clerical work.¹

Farming now has general favor as a form of prison labor. The prison farm should on the whole be large, perhaps containing not less than one acre for each convict. The land need not be the most fertile, but should be of such character as to permit wide agricultural operations, including gardening, fruit growing, dairying, and live stock raising. Much can be thus produced for the consumption of the institution. Nearly all penal institutions to-day have farms of some size, most having at least several hundred acres, some near a thousand acres, and a few even more. The total number of acres belonging to prisons and reformatories (59) is 123,386. Of this acreage 38.0 per cent is under cultivation (1923).

The particular occupations of women in prisons are chiefly knitting, weaving, and various forms of sewing; preserving and canning; poultry raising; small farming; laundry work; cooking and different forms of housework.

So far as prison labor has involved juvenile delinquents in their institutions, it has consisted mostly of the making of brushes, chairs, shoes, and other articles. There has always been much farm work in connection with such institutions.

¹Complaint is sometimes made that there is too much nonproductive work carried on in prisons, especially clerical work.

Articles or industries that are to a considerable extent, often practically exclusively, of State use character are road construction, building construction, repair and shop work, soap, automobile tags, road signs, linen work, shoe repairing, desks, miscellaneous articles of clothing, mattresses and upholstering, quarried and crushed stone, printing, miscellaneous articles of furniture, farm and allied products, textiles, underwear, brick, tailored suits, and rockers (together with settees and benches). The articles of greatest financial value made under the State use system are farm and allied products, textiles, clothing (all kinds), and automobile tags. The State use system embraces in one State or another almost all articles of prison manufacture. In Federal prisons the State use system is virtually the exclusive system. Public works and ways are represented chiefly by road making and repairing and building construction. The former constitutes about four-fifths, and the latter one-fifth.

The principal articles produced under the public account system are shirts, binder twine and rope, shoes, coal mined, pants, farm and allied products, overalls and jumpers, brooms and brushes, reed chairs, children's play suits, hosiery, and bungalow aprons. The public account system is found for nearly all articles, all the States being taken together. The piece price system is found for workshirts, children's play suits, aprons, chairs, hosiery, harness sets, monument and stone work, stoves, and shoes. The contract system is found for shoes, workshirts, chairs, horse collars, lumber work, hollow ware, and hosiery.

VALUE OF PRODUCTS

The principal articles produced in prisons with the value of each are as follows (1923):

Clothing	\$21,615,088
Work shirts	11,760,900
Work pants	3,349,803
Overalls and jumpers	1,988,980
Children's play suits	1,149,030
Tailored articles	1,221,088
Bungalow aprons	854,970
Shirts (chambray and flannel)	622,726
Aprons	329,365
Miscellaneous	338,226
Shoes	5,759,240
Shoes repaired	175,469
Textiles (cotton, duck, etc.)	2,980,509
Hosiery	1,194,727
Underwear	383,228
Linen work (towels, embroidery, etc.)	879,951

Furniture	2,921,825
Chairs (reed and wood)	2,364,211
Rockers, settees, benches	73,347
Desks	114,613
Miscellaneous	369,654
Brooms and brushes	1,818,525
Bags	350,931
Mattresses and upholstering	117,339
Soap	115,601
Stoves	564,178
Hollow ware (of cast iron)	352,766
Box shooks	136,513
Farm implements	236,765
Harness	530,150
Set	316,940
Horse collars	213,210
Binder twine and rope	5,588,372
Printing	330,623
Forms, circulars, pamphlets, etc.	247,742
Other printing	82,881
Automobile tags	1,118,768
Road signs	103,466
Farm, garden, dairy and live stock	5,797,068
Coal mined	4,105,424
Brick	604,502
Quarried and crushed stone	735,527
Stone cutting and monument work	172,054
Lumber (and certain products)	815,534
Roads	11,858,954
Building	3,566,123
Repair and shop work	637,597
Miscellaneous	507,751

So far as value of product is concerned, clothing is much the most important article produced in prison. It represents almost three-tenths (28.3 per cent) of the total value of articles produced. Workshirts alone constitute one-seventh (15.3 per cent); while work pants (4.1 per cent), overalls and jumpers (2.6 per cent), tailored suits (1.6 per cent), children's play suits, (1.5 per cent), and bungalow aprons (1.0 per cent) together make up over one-tenth (10.8 per cent).

After clothing, the thing that is of greatest value from prison labor is road construction, this constituting a little under one-sixth (15.4 per cent) of the total value of prison products. It is followed by farm, garden, dairy, and live stock products (7.6 per cent), shoes (7.6 per cent), twine and rope (7.3 per cent). These three products, together with clothing and road construction, form two-thirds (66.3 per cent) of the value of prison products.

Coal mined (5.4 per cent), building construction (4.9 per cent), textiles (4.0 per cent), and furniture (3.8 per cent—3.1 per cent being for chairs) together make up almost one-fifth

(18.1 per cent). Other articles, each with a value of not less than 1.0 per cent of the total, are brooms and brushes (2.4 per cent), hosiery (1.6 per cent), automobile tags (1.5 per cent), linen work (1.1 per cent), and lumber (and certain products thereof) (1.1 per cent)—all accounting for 7.7 per cent. All the articles just specified constitute a little over nine-tenths (92.0 per cent) of the total value of prison products.

The total value of all prison products is \$76,096,950. Of this amount, \$18,249,350 is to be credited to the contract system; \$16,421,878, to the public account system; \$15,331,545, to public ways and works; \$13,753,201, to State use; and \$12,340,986, to the piece price system.¹

RETURNS TO STATE FROM PRISON LABOR

How much prison labor contributes to the upkeep of prisons, or how much the State makes out of the matter, can not be fully known. A great deal depends upon the businesslike procedure followed, upon the efficiency of operations, upon the extent and character of outside competition, and upon the allowances made to prisoners in the way of compensation for their work. In 1923 the income of prisons not from appropriations was \$6,079,014. In 1926 receipts from "other sources" (not appropriations) were \$13,639,308. Probably practically all of this came from the proceeds of prison labor.

In certain States prison labor has earned a substantial profit for the State, now and then amounting to as much as several hundred thousand dollars in one year. In some States the prisons have been made at least self-supporting. Convict labor in other prisons pays a certain proportionate part of their costs, as one-half or three-fourths. The aim of most is to become entirely self-supporting. In an increasing number the object is to return to the State the amount necessary for the maintenance and upkeep of the institution, and to allow whatever profits are above this as compensation to the prisoners. (The matter of compensation is considered later.)

EXTENT OF OUTSIDE COMPETITION

In connection with the disposal of prison-made goods, full consideration must be given to the matter of competition in the public market with articles made by free labor. Objection was

¹ There was paid for the hire of convict labor \$3,183,835.

first raised to the contract system of prison labor, and later to the piece price system, but the public account system has been regarded with no less disfavor.

The exact extent of competition in the entire open market of prison-made goods cannot be known; but on the whole it cannot at present be great. All told, its value is believed to be approximately 0.13 per cent of the value of the total annual industrial output in the United States (estimated at about \$60,000,000,000); while prison workers constitute possibly 0.6 per cent of all who are industrially employed (estimated at about 9,000,000).¹ This is in some respects a trifling proportion. In addition, there are certain other phases of the matter entitled to attention. If the prisoners who are in prisons as convicts were employed outside, competition with free labor would remain affected in not greatly different degree. Upkeep of the prison establishments, moreover, demands a certain amount of labor, which cannot be expected to be free labor. Competition of prison labor, finally, exists with respect to very few commodities. (The chief prison-made articles entering the public market, with the percentage for each, are estimated as follows: twine and rope, 6.5; shirts, 5.1; jute goods, 1.3; linen goods, 0.6; shoes, 0.4; furniture, 0.3; hosiery, 0.3; clothing (not shirts), 0.2; agricultural implements, 0.2; brick and tile, 0.1.)

The problem arises, however, from this concentration of prison labor upon relatively few articles, or in a restricted area. Of the total value of prison products, over three-fifths (62.0 per cent) are created under the contract, piece price, and public account systems, an arrangement which forces them into the open market. The matter is made the more serious by the selling in one State of articles made in another, perhaps against the policy or wish of the latter State. Sometimes prison-made articles are sold when not known to be such. Of the total value of goods sold in the open market, almost three-fifths (58.0 per cent) are disposed of in an outside State. Almost one-half of the States dispose of practically all their prison-made products outside. With most of the remaining States products are sold outside to a greater or less extent. (These figures have reference in general to the year 1923.)

¹ See 70th Congress, 1st Sess., 1928, Hearings before Committee on Interstate Commerce, United States Senate (Convict Labor); Hearings before Committee on Labor, House of Representatives (Prison Made Merchandise); 69th Congress, 1st Sess., 1926, Hearings before Committee on Interstate Commerce (Convict Labor).

POSSIBLE REMEDIES AS TO OUTSIDE COMPETITION

A number of solutions have been proposed with respect to the competition of convict labor with free labor in the open market, all with but limited success. An easy method of meeting the problem has now and then appeared in the forbidding of the sale of prison products in the State where they have been made, thus forcing their sale in other States.

Other regulations adopted to a greater or less extent are requirements that prison-made articles be so labeled; that a special license be issued for dealers in them; that certain lines be forbidden altogether; that the number of workers in a given industry be limited; that not less than a certain number of lines be carried on; that no power but human power be allowed in manufacture; that no machinery be permitted; that employment of prison labor not be permitted if in conflict with free labor. One special sign of hopefulness in the situation is the increasing comity among different States as to prison-made articles, with an increasing realization on their part of the necessity of interstate action upon the subject. As a result, the forcing of prison-made articles of one State upon another may be expected to be reduced, and perhaps finally eliminated, with the due regulation of interchange of articles. This is the more likely under the Federal law enacted in 1928, requiring, under the powers of the Federal Government in the regulation of interstate commerce, that all prison-made goods coming into a State be subject to the regulations of that State in the matter (five years being allowed for the complete operation of the law). This will do a great deal to put a stop to the overrunning of one State with prison-made articles of another. The problem, however, in the State where the articles are made is not solved: it is made the harder.

It must be admitted that the difficulties in the entire question remain great, and that there is little in sight as yet as to their complete removal. Some States are having greater success than others in meeting the problem of prison labor as a whole.

POSSIBLE EXTENSION AND IMPROVEMENT OF
STATE-MANUFACTURED ARTICLES

If prison labor is to continue, and if it is to be placed upon a sounder footing, it will have to become in larger degree a matter under direct State control. Forms of prison labor in the hands of private interests and conducted for private profit are meeting

ever increasing objection and opposition; and their end for the most part cannot be far distant.

As one particular solution of the entire prison labor problem, there is proposed an enlarged resort to the State use system. Its great advantage is that it provides supplies for the various State institutions at a minimum cost, while affecting the general market for such articles in but limited, perhaps negligible, degree. The chief disadvantage is that there must be a large overhead cost for a very restricted output. Special facilities or machinery, together with directing service, must be provided, with only a limited quantity production.

A larger field may be possible, however, than has previously been thought. Extensive study is called for of the various purchases which the State has to make. Various articles may be found capable of production for State institutional consumption—clothing, furniture, foodstuffs (especially bread), domestic equipment, printing, shoes, building material, knit goods, brick, brushes, agricultural products, soap, etc. The articles to be made in prison should generally be those that can be transported with no great trouble. The extent of industries may be broad, covering the needs of all State institutions. Any possible surplus may be sold in the open market (though efforts are to be made to avoid this as far as possible), and at regular market prices, or only a little below. Manufacturers and laborers are now adopting a more sympathetic attitude toward the State use system.¹

So far as efficiency and productivity are concerned, the public account system is probably the best system of all—but always apart from the question of competition with private industry—for with an extensive field of production the public account system permits better shop organization, better methods of securing material, better selling methods, and perhaps better compensation for prisoners. The public account system is much more likely to make the prison a self-supporting institution.

Possibly a considerably larger market may be created for prison-made articles, especially if encouragement is lent to the production of wares not made elsewhere in the State—though this policy should not be developed to the extent of forcing them upon other States. So far as is possible, articles should be chosen of a non-competitive character and with a restricted market.

If prison industry is to be made relatively successful, it will

¹It is stated that one-fifteenth of the commodities used by public institutions can be produced by prison labor. *Survey*, Oct. 15, 1923.

have to be to a large extent overhauled. Modern equipment must be installed, skilled and experienced foremen employed, and strict business methods followed. Public funds may be advanced as some sort of revolving fund to get the industries started, or till they may be supposed to be self-supporting. A central purchasing system may be availed of in larger measure. There should be greater standardization in production. Improvement should extend to prison farms, which are to be put to greater productive account.

In the selection of industries in prisons, and in the extent to which they are to be followed, much consideration is to be given to proximity of materials, including costs of transportation, and to reduction of overhead charges by widest use of facilities. Both vocational and therapeutic values, together with qualifications and aptitudes of prisoners, are likewise to receive full attention.

There should be a fairly close connection between the satisfactory performance of prison tasks and eligibility to discharge. Credits should be allowed for efficient work. Continuous faithful work for a given time, as a year, for example, and the earning of one's full maintenance, may be allowed to have considerable effect in the reduction of a prison sentence.

The problem of prison labor has for long undergone careful study; but perhaps never before has there been such consideration of it as at present, with the hope of putting it on a businesslike basis, and of ridding it, as far as possible, of the evils and weaknesses associated with it.

THEORY OF COMPENSATION FOR PRISON LABOR

A matter in connection with prison labor to which attention has been increasingly directed of recent years is that of compensation of prisoners for their individual labor. This arrangement is not a wholly new one. In earlier times there have been slight payments here and there, though as a general thing such attempts have been short-lived, and with little to show for them. The movement may well be called a modern one.

The policy of compensation has had to fight its way in American prison procedure. For long it was the accepted theory that the prisoner was entitled to no compensation whatever. Had he not already cost the State a large sum in his apprehension, trial, and imprisonment—to say nothing of possible losses through his crime itself? If the State could make anything out

of whatever work could be extracted from him, it was both proper and businesslike thus to reimburse itself in some degree for its trouble and expense. In addition, were there not many men out of prison who had no crime charged to them, and who were anxious to get jobs? Was it fair to them to have convicts earning wages when they could not? Public sentiment on the subject has, however, undergone notable change. The importance and the desirability of a definite system of compensation to prisoners for their labor is being recognized in ever wider measure; and before long doubtless the plan will come into general use.

There are several distinct considerations to be advanced in connection with this plan. In a wage payment there is afforded a much needed incentive to diligent and faithful effort on the part of the prisoner. There is recognition of aptitude, diligence, efficiency. Real habits of industry are inculcated. The social development of the prisoner is advanced. Discipline in the prison is greatly promoted, and some of the difficulties attending it are lessened if not eliminated. The productive power of the prisoner is enhanced to the direct financial gain of the prison. A more businesslike order is possible, and the system lends itself to more exact financing.

Another phase of the matter is of an ethical nature. Has the State the right to take advantage of the prisoner's condition and exploit his labor? Has he himself not some claim upon the earnings for which he is in great measure responsible?

Still another factor is that the prisoner is by this plan of compensation enabled to save up something against the day of his discharge or departure from prison, which may serve him in good stead at that time. A further concern, and one of increasing moment, is that of provision through this means for the dependent members of the prisoner's family. They must be cared for in some way by society, often now in an ineffective way. Why not make the prisoner responsible for their support through his earnings? This is a constructive measure, the kind receiving more and more approval in organized charity.

In apportioning the possible pay of prisoners, a number of considerations arise. How far should there be equal pay for equal work? Apart from the matter of individual industrial efficiency, how far should other factors enter into the question—character of crime, general conduct of prisoner, condition of prisoner's family, proper allowance for domestic work in prisons, such as cooking, cleaning, etc.? Probably the factor to which most

attention is to be given is the condition of the prisoner's family—its number, needs, resources, etc.¹ As time goes on, a fairly satisfactory plan of compensation may be expected to be worked out. Wages will be more and more proportioned to individual effort, with relation to the productive efficiency of the establishment, and with adequate consideration of the needs of dependent members of the prisoner's family. It is even suggested that prisoners be paid regular wages, out of which are to be deducted charges for their support. In other words, the prisoners will be presumed to pay the prisons for their maintenance—a novel, but not wholly unreasonable, theory as to the relation of the prisoner to his prison.²

PRESENT PROVISIONS FOR COMPENSATION

Some two-thirds of the States (1923) authorize payment to prisoners for their labor. In about one-half a wage is actually paid. In perhaps one-sixth a wage is payable to all prisoners; in one-fifth, to all who are employed; and in one-fifth, to all who are employed at some particular occupation. In a few States pay may also be allowed for overtime work.

The actual wages paid are in general low. Of those States which have compensation, about three-fifths grant 10 cents or less a day; one-seventh, from 10 to 20 cents; and one-fifth, over 20 cents. Wages vary from 5 cents to one dollar or more per day. Possibly the average is about 15 cents. In other words, convicts in prison receive for their work from one-twentieth to one-third of what they have earned, according to standards of free labor (but without allowance for general relative inferiority of prison labor).

There is a tendency to-day toward an increase of pay for prison labor. It is not likely ever to equal the wages of free

¹ Of admissions to the State prison in Ohio, 14.4 per cent of inmates have dependent wives only; 28.6 per cent, dependent wives and children; 7.6 per cent, dependent children only; 7.4 per cent, other dependents; and 41.8 per cent, no dependents. Report of Joint Legislative Committee on Prisons and Reformatories, Penal Problems in Ohio, 1926. In Kentucky one-third of those confined in prison are found to have dependent children under sixteen years of age. In the latter State one-half of wives took up any possible kind of work, and three-fourths moved to new quarters. Children's Bureau Publications, No. 182, 1928 (Welfare of Prisoners' Families in Kentucky).

² The prisoner might also be expected, so far as possible, to pay for all the damage he may have done, and for costs of prosecution as well.

labor, but it will have a much nearer approach than is the present case.

DISPOSITION OF SAVINGS OF PRISONERS

Facilities are to be provided for the keeping of the earnings received by the prisoner. They become his savings, and he may open an account with the institution or some agency of it. Part of his savings may be drawn on while in prison for personal purchases, while part is to be kept till the time of his discharge. If the prisoner has family dependents, a fitting portion, perhaps the major portion, of his wage is to be set aside for their benefit, and duly transmitted to them by the prison authorities. Interest may be charged on savings, which may be added to the principal, or may perhaps be used for some welfare work for the prisoners, as already indicated.¹

In general, the matter of wages, including their apportionment and their disposition, is in the hands of the prison administration, it being allowed much discretion.

¹Sometimes it may be desirable to have a canteen or commissary, for the selling of certain supplies at cost.

CHAPTER LII

LOCAL PENAL INSTITUTIONS

PURPOSE AND ORGANIZATION OF JAILS

The jail was first largely planned as a place of detention for persons awaiting trial, and also for witnesses, as the surest way of preserving custody of their persons. In the course of time it became a place to which minor offenders were consigned. Though the jail now ostensibly serves both functions, it has to a large extent become a local institution of punitive incarceration. It is in greater part a county institution, and in lesser part a city. It is often the best known penal institution.

The county jail in the United States is in general in the hands of the sheriff, perhaps under the immediate direction of an official called the jailer. It is usually subject to visitation and inspection by the grand jury, the one body, especially for counties, which can hold officials to account, or which can secure jail reforms. Sometimes a county officer, particularly a judge, is authorized or required to make visits. In a few cases private prison associations do a certain amount of unofficial observation of prison conditions. In an increasing number of States, a central State agency, especially a State board of charities, has power of supervision. The city jail is for the most part in the hands of the city department of correction or a similar department. The person in charge of the jail is often allowed so much money per day for feeding and otherwise caring for the prisoners—a well-known instance of the fee system.

The jail, being usually a relatively small institution, is for the most part with little or no facilities for education, for recreation, or for work. Some jails, however, especially the larger ones, have prison labor on the order of regular prisons, but on a smaller scale. In a few cases prisoners are allowed to go outside for work during the day. In the south there has been a considerable amount of road work carried on through road camps, on the order of jails.

POPULATION OF JAIL

The jail population may be composed of several classes: persons charged with an offense and awaiting trial without bail (and also possibly witnesses); persons sentenced for some lighter or less serious offense, including persons sentenced to imprisonment for failure to pay fines; occasionally persons of suspicious character or of roving disposition who require for some reason "holding;" sometimes persons who have been sentenced and are awaiting transportation to a regular prison; and now and then persons defective or dependent for whom there exists no other resort (sometimes insane persons awaiting commitment).¹

The proportions of the different classes vary not a little in different communities. We have already seen that over one-half (52.9 per cent) of the population of jails and workhouses are there because of nonpayment of fine. In many cases the fines required are of but small amount. Of persons charged with an offense and simply awaiting trial, a considerable proportion are later discharged, though they may have to remain in jail for some weeks or some months before they are freed.²

The principal offenses occasioning sentence to jail are drunkenness, violation of liquor laws, disorderly conduct, vagrancy, violation of city ordinances, violation of traffic laws, larceny, assault, prostitution, and fraud. Sentences are in general for a very short period. Two-thirds of commitments are for thirty days or less, a little under one-half for less than thirty days, and one-sixth for less than ten days.³

The jail population varies greatly in different communities, and even as between adjoining communities. Some counties have a ratio to general population several times as great as another. Differences depend upon general conditions as to crime, length of commitment to jail, density of general population, zeal of enforcement officers, tendency of particular judges to commit or to discharge (some judges discharging offenders several times as frequently as others), extent of use of fining system, extent of use of probation system, extent of use of State penal institutions, etc.

¹ Sometimes in civil cases the jail may be availed of in execution against the person.

² In 1917 there were enumerated 19,376 persons in jails awaiting trial (or with the same ratio for all jails, 19,927). Department of Commerce, Number of Prisoners in Penal Institutions: 1917, 1922. The number has been estimated to be 50,000. E. H. Sutherland, *Criminology*, 1924, p. 214.

³ See pp. 343, 344, 445, 446.

CRITICISM OF JAIL

There has been wide criticism of the jail in the United States. Its evils and shortcomings have been variously pointed out, with few redeeming features. It is often referred to as a relic of barbarism, or as an outstanding disgrace to the nation and to civilization. Much of this criticism of the jail must be admitted to be not far from the mark, though with certain notable exceptions. The jail has undergone but little scientific evolution since it was introduced into America. Doubtless it has improved, but the general attitude toward it has been one of neglect. A frequent indictment of the jail is that it consists of "foul dens infected with vermin, and reeking with dirt and filth." Sanitation, heating, ventilation, lighting have all been found wanting or defective.

Sometimes children have been allowed to enter, and now and then are reports that the sexes are not sufficiently separated. In most States at present, however, a child under a certain age—most often fourteen, possibly a little older or a little younger—may not be placed in a jail or prison with adults. Room is made at times for persons not even charged with delinquency.

Not only is there possible physical deterioration, but moral as well, and of more serious consequence. The effects of evil associations here can not be well exaggerated. The jail in its way constitutes an excellent school for crime. With very little reading matter available, with education and vocational training almost completely lacking, with work afforded to but a slight extent, and with practically no facilities for recreation, idleness becomes a special curse, and contacts of one prisoner with another can hardly be other than hurtful. Too often there are drugs smuggled into jails. One can hardly be expected to leave a jail in other than a worse state than that in which he was before entering.

With the generally small pay afforded and with the uninviting associations involved, it is very difficult to secure suitable persons to assume charge of jails. The fee system, under which prisoners in the jail are often maintained, is in itself a particular evil. It lends itself to not a few abuses. The financial allowances are often "flat," and are not properly apportioned. An official may be unwilling to take full action against a wrong-doer without such incentive, while with it there is temptation to over-activity. The fee in some cases may operate as a lure to office-holding; and too often it has been a prize for local politicians.

Graft and corruption are ever possible under it. The system is unsound in principle and ineffective in practice.

POSSIBLE IMPROVEMENTS IN JAIL

Much may be done to improve the jail. For some classes other provision should be adopted. Children should never enter. Separate quarters, if possible a separate institution, should be provided for women, and under a woman matron. First offenders should be kept from hardened offenders. Due attention should be paid to sanitary and hospital conditions, to recreation, reading matter, and, perhaps, labor; in fact, on a small scale, such provision as would be found in a first-class prison.

Some local body or certain county officials—smaller in number, more regular as to time, and more expert than a grand jury—should have power of visitation and inspection. Better still, some central State agency, as a State board of charities, or similar body, should have power of supervision and power to enforce minimum standards, with an expert official having immediate oversight.

Undoubtedly the State should exercise a much greater degree of control over the county jail than it now does—even though the administration of county institutions is not generally within the purview of the State. This is, after all, but the logical procedure. It is the State which determines crimes and fixes the penalty, even though it is the county which individually prosecutes. The State already provides the means of punishment for the more serious offenses. It could well go the whole way, and provide means of punishment for all offenses. In other words, jails should be to a large extent State institutions rather than county.

STATE INSTITUTIONS AS POSSIBLE SUBSTITUTE FOR JAIL

In the present day of good roads and rapid transportation, there is no longer need of a local penal institution in every county, it in general being too small a unit for successful administration. A State institution would be in the interests of efficiency and economy alike. Most of the evils associated with the local jail could be remedied, and a better and more useful institution would result. Suitable salaries would be possible for keepers, together with the abolition of the fee system, and better men attracted into the service. A far better classification of prisoners could be effected, a prerequisite to proper treatment.

In addition, some attempt at farming could be made, with a greater or less approach to self-support.

Moreover, the problem of a certain class of criminals or semi-criminals, especially vagrants, is after all a State problem, and leaving it to a county to deal with, instead of helping it, rather aggravates it.

One immediate result of this policy would be to lessen the number of jails, the State simply establishing certain ones at convenient points over the State. Large cities could of course have their own jails. One or more State penal farms could be provided for prisoners sentenced for more than a certain time, as one month, and also for those sentenced for a shorter period at the discretion of the court, especially drunkards, vagrants, etc. Some such plan has already been adopted in a few States, and its spread is probably but a question of time.

In lieu of a State institution on the order of a jail, if this is not immediately feasible, there could well be a district jail, a number of contiguous counties or communities uniting for the purpose.

MEANS OF REDUCING POPULATION OF JAIL

The local jail, if it is to remain at all, should be a diminishing institution. It should become, as it was first designed, simply a place of detention, without its present penal character. As such, it need be but a relatively small institution. Cases of a dangerous type might be provided for in it, or perhaps in some State institution for keeping till the time of trial. Persons who are not dangerous and are not liable to attempt an escape could well be cared for by some other means than commitment to jail, perhaps by an extension of the bail system.

As a place for punishment, the jail should be superseded by a district or State institution. If it is to continue in this character, its population should be reduced by a more extended system, on the one hand, of probation or suspended sentence—especially for those confined a very brief time—and, on the other hand, of payment of fines by installment. Persons also convicted and sentenced to some higher penal institution should at once be removed thereto. Furthermore, speedy trials, prompt and thorough investigations after arrest to justify holding the accused, a better system of deposition in the case of certain witnesses, and an improved bonding system to release those able to secure bail would do much to empty jails.

WORKHOUSES

The workhouse or house of correction is a modified form of the jail, characteristic rather of the city than of the county, and of greater resemblance to a real prison. In certain cases it is an annex to a jail, or in combination with a jail or an almshouse. The workhouse was not designed, as was the jail, for purposes of detention, but as a place of punishment for persons sentenced for a brief period, especially vagrants, drunkards, disorderly persons, petty thieves, etc. It ostensibly provides some form of work or industrial activity for its inmates, but this has seldom proved of great value. "Repeaters" form a large part of its population. The institution not infrequently becomes a receptacle for the wastes and misfits of life. Many of the inmates are unfortunate and friendless—a certain proportion are on the borderland of criminality. Some are defective or in poor health. The workhouse is in general under the city department of correction or similar agency. (A few county penitentiaries are on the order of workhouses.)

MINOR LOCAL INSTITUTIONS

Other county penal or correctional institutions are mainly county farms and county chain gangs, both found in limited areas. Other municipal institutions are mainly municipal farms and "stockades," the latter rather for brief confinement. There are, in addition, a great number of "lock-ups," or diminutive jails, in various towns and villages of the country. In a small number of cities a place of confinement may be the police station, with a special room or a cell or two used for temporary detention purposes. For juvenile delinquents special detention homes may be employed.

In some communities there are special county or municipal institutions for young delinquents, somewhat on the order of State reform schools. These institutions (1923) number 30, 23 being for boys, 6 for girls, and 1 for both sexes.¹

In addition, there are facilities more closely affiliated with the regular schools, which are designed to deal for a brief period with "troublesome" children, for the most part boys, especially in the formative years of life, and before they have passed into hardened or incorrigible offenders—or "pre-delinquency" cases.

¹ Report of Census Bureau—Children under Institutional Care: 1923, 1927, p. 288.

They are particularly concerned with such offenses as truancy, insubordination, petty thievery, incorrigibility, waywardness, immorality, etc. They may be for children whose home conditions are more or less unsatisfactory, or to whom it is desirable to give an opportunity for change of point of view as to family or home conditions. Most came into being rather in the latter years of the nineteenth century. In some instances aid is received from private sources.

There have been several forms of this undertaking, though none of really wide development. In the special disciplinary school, pupils are transferred from the regular school for such period of time as may be necessary. In the parental or the truant school, perhaps with boarding arrangements if required, children receive watchful care, along with education and training. Sometimes children may be received from the juvenile court.

A tendency of somewhat different character of later years, now to be observed in a number of cities, has been, not so much the establishment of special schools, but rather of special classes, small in size and in the hands of special teachers, for children with behavior problems. Another development of recent years has been the establishment in certain communities of a system of special visiting teachers to deal with the child who gives trouble, or who seems to require attention. In some cases there are child guidance agencies or clinics, at times supported from private funds.

CHAPTER LIII

PRIVATE CORRECTIONAL INSTITUTIONS

There are a number of private institutions for juvenile delinquents, and also for female delinquents, the work of most being confined to particular cities, though often persons from outside may be received as well. These include homes for wayward and delinquent girls and women, certain types of homes for boys, big sisters' homes, girls' protective agencies, Salvation Army homes, Florence Crittenton homes and similar homes for girls, Houses of the Good Shepherd, junior republics, etc. All inmates are not to be regarded as of delinquent character. (A small number of delinquent children are in private institutions for dependent children.) Some of these institutions are under religious auspices. Some are controlled by private associations organized for the purpose. Some are part of several activities carried on by a particular body. Some have been established by a certain donor who has left funds for carrying on the work. Inmates may be received by court commitment, or on application of parents or relatives. Some such institutions are in greater or less degree under State supervision and subject to State inspection. All should be so. Many receive public aid.

To a considerable extent these institutions are on the order of public institutions for juvenile delinquents, with due regard for education, vocational training, recreation, etc., but sometimes with less connotation of or less emphasis upon correctional aspects. (Treatment of a really "penal" nature would be in the hands of public authorities alone.)

There are (1923) 303 institutions in all of this nature—15 institutions caring for delinquent children (boys and girls), 69 for delinquent women and girls, 197 for wayward women and girls and unmarried and destitute mothers, and 22 institutions of a reformatory type (12 for girls, 9 for boys, and 1 for both sexes).¹

¹ Census Bureau—Children under Institutional Care: 1923, 1927, pp. 288, 343.

PART IX

NON-INSTITUTIONAL METHODS OF
TREATMENT OF OFFENDERS

CHAPTER LIV

PROBATION

THEORY OF PROBATION

Probation represents a new order in criminal procedure, and involves a radical change in the dealings of society with the offender. It is a form of non-institutional treatment, or of conditional release, which permits the offender to retain his freedom outside prison walls under a certain measure of control, while affording him an opportunity to reform or redeem himself, and thus to obviate the necessity for actual confinement, or for an institutional sentence, it being understood that if he proves himself unworthy he must undergo usual punishment. Should probation turn out satisfactory for a given period, the regular sentence of imprisonment may be cancelled and the offender discharged—being now absolved from any possible further punishment. Should probation be found unsatisfactory, or should its provisions be violated, the original judgment, which has simply been held in abeyance, goes into effect, or the offender is returned to court for suitable and sterner treatment. During his period of probation he is under the surveillance—or rather helpful supervision—of officers of the court. (Suspension of sentence may continue after probation.) The system also involves a study of the conditions which caused the offender to offend—an investigation into his “social history”—with report thereupon brought to the court, to help it determine proper action in the case.

Probation and parole constitute the two great non-institutional methods of dealing with the offender.¹ To an extent they are much on the same order. There are certain features common to both systems, or certain features parallel in both. In both there is established a process of correctional treatment external to the prison, but under the care and observation of public officials—this being intended as an experimental or trial proceeding, to ascertain whether it is an improvement upon incarceration or

¹ Fining is also a non-institutional method, but without any elements of treatment.

is a satisfactory substitute for it, or whether the offender is entitled to have even this restricted liberty. In both there is involved a study of the condition and needs of the offender. The essential differences between probation and parole are that with probation there is no contact with the prison at any time, while in the case of parole there is required a certain preliminary imprisonment; and that probation is rather part of the work of the court, or an adjunct of it, while parole has its focus in the penal institution, administered to a greater or less extent through it.

Probation is also similar in some respects to suspension of sentence (and sometimes unfortunately regarded as practically its equivalent). It implies, however, much more; and is in fact something quite distinct. It is a relatively full and formal procedure, and one demanding a certain definite organization. It does not stop with the mere respite of a sentence and the holding of it in abeyance. It goes to the extent of providing official surveillance and control for a given period, together with a preliminary study of the offender, the imposing upon him of definite conditions, and the committing of him to helpful influences—all integral parts of the system.

Probation in criminal procedure is far from being a light matter. It is to be entered upon only after full understanding of its theory and involvements. If wrongly undertaken or poorly administered, it will cause a serious setback in criminal justice and will render the more difficult the problem of dealing with the offender. Its success hangs, more than upon anything else, upon its use only with the right cases and under a competent system of probation officers. The securing of public confidence for it is an elemental consideration.

Many, however, are the intrinsic advantages of probation, and great may be the general gain from its use. Indeed, the time may within the bounds of possibility arrive when it will have so fully taken the field in the treatment of the offender that it will be considered as a generally desirable alternative to confinement behind bars, and the prison will be reserved, apart from those requiring temporary or provisional detention and care, for offenders who constitute a positive danger to society or for the morally incurable. Probation shows forth in extraordinary measure the possibilities and implications of social case work, and at a vital point. Its aim is the reform and rehabilitation of the offender. So far as it attains its object, it will rank second to nothing else among the achievements of human society.

PRINCIPLES OF PROBATION

The underlying principle of probation is that those who have fallen by some mischance or misadventure or sudden lapse from virtue or sudden yielding to temptation, should, instead of undergoing imprisonment with all its connotations, have a chance to start over again, or to retrieve themselves—punishment being postponed or suspended till there is better indication of its actual need. Probation seeks to distinguish between persons transgressing from some sudden or immediate occasion and persons with really vicious and criminal tendencies; from this latter group society demands protection through incarceration. Probation is to appeal to the interests, self-respect, and self-control of those who are in greater or less degree amenable to reformative influences.

Probation constitutes a disciplinary process which seeks to improve the behavior and the character of the offender, and at the same time to disarm him, so to speak, as a further danger to society, without committing him to a correctional or penal institution. Release of the offender is only conditional, and always under the surveillance of some court official, called the probation officer—a friendly but authoritative oversight. The offender is to follow certain lines of conduct—to keep away from bad companions, to avoid evil habits, to have regular employment, to pay part of earnings as directed, to report regularly to the probation officer, and to perform similar duties.

Probation may itself be regarded as a real means of punishment. It requires obedience to certain conditions and instructions, and restrains liberty in actions, habits, associations, recreation, work, and general living. It necessitates the reference of one's conduct to another's approval, and subjects one's life to outside direction.

During the period of probation, and especially at its beginning, forces are put into operation apart from and in addition to the immediate movements of the probationer himself. The process includes the seeking out of the causes of the offender's erring, and if possible their elimination from his life. His ways of living and surroundings are studied, and efforts are made to change those which are not favorable. Methods of improvement are suggested as to personal habits, home conditions, environmental influences, etc. There is embraced what is sometimes called personality adjustment or personality development. In short, probation permits individualization of treatment in a high de-

gree. It becomes social case work of rare moment and with rare social values, requiring careful diagnosis, sharp observation, and intelligent and far-sighted direction. It turns out to be a form of constructive discipline of exceptional order.

ADVANTAGES OF PROBATION

Definite advantages of probation may be summarized as follows: (1) By a study of the history and character of the offender and of surrounding conditions, knowledge is obtained which permits treatment according to his individual needs. (2) By the affording of another chance to offenders not hardened, and by commitment to helpful influences, bad habits and dangerous tendencies may be corrected in time, while there are avoided contaminating and demoralizing contacts with vicious offenders in prisons. (3) Through the entire process there is availed of a constructive and reformatory treatment of special worth. (4) By allowing an offender to be employed and to receive due wages, provision is possible for the dependent members of his family—much depending upon his earning capacity and his temperament. (5) There is spared the disgrace of imprisonment to the offender and to his family, a consideration which may awaken appreciation and gratitude, and may lead to a desire for reform. (6) The cost of imprisonment is saved to the state—possibly a very great saving. The per capita cost of probation may be only a small part, perhaps one-eighth or less, of that of imprisonment—though it is to be remembered that a really efficient probation service cannot be expected to be inexpensive. (7) The prison population is reduced, with beneficial effects upon any possible overcrowding.

The advantages of probation, just as are its principles, are in large degree on the order of those of parole.

QUALIFICATIONS FOR PROBATION

Probation is not for all offenders. Apart from juvenile offenders, for whom it is peculiarly appropriate, it is most suitable for those who have committed crime for the first time, or for those whose moral lapse is rather due to some sudden occasion and does not appear of permanent character, or for those whose crimes are not of atrocious character or do not give indication of brutal impulses or deeply ingrained criminal propensities. It is often the better fitted for persons guilty of misdemeanors

than for persons guilty of felonies. Not prepared for probation are such classes as the feeble-minded, confirmed inebriates or drug addicts, or habitual criminals, or offenders with fixed anti-social proclivities. It may not be expedient with persons charged with the most serious or the most violent crimes, or crimes where deadly weapons are employed, or crimes in which public confidence is violated, or crimes where exemplary punishment is called for. It is an open question at what point the privilege of probation should be denied. Sometimes it is a matter for "enlightened discretion." Much may depend upon the circumstances of individual cases.

PROCEDURE IN PROBATION

Before probation is attempted or even seriously considered, there should be made a full report to the court as to the actual condition and experiences of the offender, and especially as to the circumstances attending the commission of his offense. In the report should be included whatever mental, physical, social, economic, and like factors have a bearing upon the case. Not infrequently a mental or physical examination is highly desirable. A psychiatric clinic is often a necessary appendage in probation proceedings.

To insure the best results in probation in general, it should be permitted in the case of adults after due notice to the prosecuting officer concerned, with opportunity for him to say a word in the matter, or after conferences with other parties concerned. (Another desirable prerequisite is a public statement with the reasons adduced for the granting of probation.) Final decision should rest with the judge, on the basis of the investigation of the probation officer.

If probation is to be effective at all, the period for the purpose must be adequate. A certain minimum time is necessary if influences of a reformatory character are to come into operation, or if really constructive treatment is to be afforded, or if there is to be a real opportunity to make proper discoveries as to the offender and his tendencies. If the time is too brief, the attempt is hardly worth while. Preferably the period of probation should be left indefinite; in some cases it should continue for the maximum period of the original sentence. Release in general should be effected only when it is justified. If a period is specified, it should hardly in any case be for less than six months or a year. The first few months are as a rule the most trying of all,

when new adjustments have to be made and when some sort of resisting power has to be built up to withstand old temptations.

In some instances it may be best to have the probationer sent to a different community or placed in a different environment, partly to insure better opportunities for reform, and partly to dispel possible aggrieved local feeling. Unless otherwise authorized or directed, he may not leave the jurisdiction concerned.

Surveillance, while always kindly, is none the less to be strict. Close touch is to be kept with the probationer; he is not to be allowed free movements, or his whereabouts unknown or uncertain. There is to be cognizance of his general activities. His associations, amusements, and resorts are to be of an approved character. He must have constant employment, or give satisfactory explanation for failure thereof. No probation without employment should be the general rule. Possibly some portion of his earnings should be expended according to direction. Full duties must be rendered to one's family or to one's dependents. Sometimes it may be necessary for attempt to be made at general family rehabilitation. Special attention is required for younger probationers and for those who are without homes. An important part of the procedure, especially for adult offenders, is frequent reporting to the probation officer. Reports are also to be made to the court as may be called for. With younger delinquents, visitation at the home and case adjustment are the more desirable. With juvenile delinquents probation is generally to be linked up with the matter of school attendance.

Violation of probation may consist of the commission of a new offense or infraction of probation rules. When it occurs, it should be promptly and effectively dealt with.

WORK OF PROBATION OFFICER

In the work of probation much the most important part devolves upon what is known as the probation officer. Upon him largely rests the success or failure of the system. His particular duties are to make a preliminary investigation of conditions affecting the offender and his offense, with report thereupon to the court; to assist in making proper disposition of the case, especially as regards juvenile delinquency; to be present at the trial or hearings, if having such precursory power, in a sense representing the interests of the offender; to have charge of, or at least to take a hand in, the work of probation

during the probation period; and to make such report or to give such information to the court or other public officials as may be necessary. The question has arisen whether better results might be expected if separation should be effected between the preliminary work of investigation and the later work of supervision, the two being placed in different hands; this may encourage and promote specialization in treatment, but the procedure may be of a more satisfactory order when the entire work is left to the same person, he being in touch with the case from beginning to end. Much depends upon the size of the territory involved and of the staff; separation may often be the better plan for adults in the larger cities. A possibly less pressing question may remain as to how far the probation officer is to be regarded as acting purely in an administrative capacity, and how far under judicial control. The probation officer may have the powers of a peace officer.

In the work of the probation officer information is sought from every possible source—the offender, his family and relatives, neighbors, friends, pastor, teachers, employer, social agencies, etc. With the offender are established sympathetic, friendly contacts. There is rendered whatever is necessary in the way of advice or special services. Reports are received; and all necessary visits are made to the home or surroundings of the offender. Attended to also may be the collection of fines, the making of restitution, or the providing for the dependent members of one's family, so far as any of these things may be demanded.

For the most part probation officers should be public officials, answerable to public authorities, and receiving pay from public funds. But in certain cases there may well be availed of the services of volunteer workers or of the agents of duly accredited private societies interested in some way in crime and delinquency, perhaps organizations created for the purpose, as "Big Brothers" or "Big Sisters," or perhaps social settlements, churches, Young Men's Christian Associations, civic bodies, and the like. As a matter of fact, a very substantial debt is owed to these private movements—both for the fine spirit and the zeal manifested, and, as often first in the field, for the showing of the way. Many persons, however, who have helped in the work in a private capacity could do so only at odd times or during leisure hours, and could seldom have more than a few cases in their hands at one time. In due season it was realized that the work was really a public function, and that generally better results could be obtained if it were taken over by the state, put upon

a systematic basis, and made an integral part of criminal procedure. Probation officers could have the status of regular public officials, and could have more of a professional standing. The work could also be made of a more permanent character. Where private workers are allowed to have a part in the undertaking, they should attend rather to certain aspects, and should be under some measure of public control. There is still abundant opportunity for the capable and earnest volunteer.

Public probation officers should give full time to their tasks. In a comprehensive system there should be probation officers for different classes of offenders. There should be men officers for men and boys, and women officers for women and girls. If possible, and where desirable, there should be further specialization according to age, race, and religion. At the same time it may be advisable to have a certain territory divided up into different districts, each under a separate probation officer. This may often be the only feasible plan in rural sections, where distances are great. In large cities, and in other areas where the work may be highly organized, there should be a chief probation officer with subordinates.

The number of cases for each probation officer is to be limited. Not over 75 should be given to one officer, preferably not over 40 or 50. With females the number should be smaller than with males.

If possible over the work of probation should be had some supervision and some measure of control by some general State agency, as a State board of charities or of public welfare (or perhaps a child welfare department where children are concerned), with power to set standards, to give advice, to require reports, etc. An even more desirable arrangement would be a special probation commission or like body, possibly as a bureau of some State board or department. There should be full coöperation between public agencies for probation and for parole, especially as relates to methods of investigation and of supervision. In cities some central agency might have charge of both probation and parole, both perhaps under the department of correction.

In the selection of probation officers too great care cannot be taken. A civil service examination should be required of all candidates, where such procedure is feasible. Entirely absent should be all that savors of political influence, both in their appointment and in the performance of their duties. Nor can too much stress be placed upon personal character and equip-

ment—probity, vision, understanding, tact, sympathy, personal touch, resourcefulness, patience, together with a strong and inspiring personality. There should be possessed, finally, no small degree of professional training.

PRESENT EXTENT OF PROVISIONS FOR PROBATION

Probation, though at present constituting a fairly new departure in criminal law, had its real origin in far earlier times, when the common law permitted the exercise of some discretion on the part of the courts, especially as a result of "extenuating circumstances." Later the matter came more directly under statutory regulations.

Though established before the juvenile court, it is the latter institution which has played a great part in the introduction of probation. It has been regarded as an essential feature of the juvenile court, even the keystone to the success of that institution; and thence the system has more or less spread to courts for adults. Of recent years the introduction of probation has also been expedited by the work of special societies for the protection or care of children, whose paid or volunteer agents were the pioneer probation officers.

Probation was first formally employed in Massachusetts in 1878, at the time largely for young adults.¹ Towards the beginning of the twentieth century it was adopted in several other States, applying largely to children. Since then it has been rather widely introduced, with relation to both children and adults.

Probation in the United States, however, has become an established public undertaking, fully organized and equipped, only in limited measure. It has been developed to a far greater extent for child offenders than for adult. Probation laws applying to children are now found in practically every State, especially in connection with juvenile courts. Laws applying to adults are found in the greater number of the States. (In most of the remaining States there is authorization at least for suspension of sentence.) For the most part these laws are merely permissive, actually operating only in communities where public opinion favors and supports them.

¹ Procedure somewhat on the order of probation was occasionally in use before the middle of the nineteenth century. In Chicago in 1861 and in Michigan in 1873 there were notable movements in this direction. There were previous requirements as to investigation of juvenile delinquency in Massachusetts and one or two other States.

A full probation system, with an adequate staff of probation officers, exists in relatively few States. In hardly over one-half of the juvenile courts are there probation officers. In hardly over one-fifth of the States are there officers for all courts. The fullest arrangements are in the populous centers. For juvenile courts there are probation officers in all the larger cities; in almost all the medium-sized cities; in a large number of the smaller cities and larger towns; and scatteringly in remaining localities. For adults the showing is far less.

Regular full-time probation officers are not generally found. Even in juvenile courts they are in a decided minority. In many areas probation officers do not have an exclusive field. Often probation work is part-time only. Not infrequently it is one of the tasks of school attendance officers, county welfare agents, etc. At times it is an added duty of peace or police officers. In some communities salaries of probation officers are paid in some part from private funds. In some private probation officers are availed of to a greater or less extent.

In certain cities, where both the probation and the parole systems are on more or less of a substantial footing, there is a tendency to have the same officers attend to both forms of work. In thinly settled communities the same officer may possibly be found looking after both persons on probation or parole and persons of impaired or defective mental capacity.

Where probation officers are public officials, they are most often selected by the judge of the court concerned, though sometimes by a State board of public welfare or of charities or some other State agency. In the most advanced systems there is a chief probation officer who is largely responsible for the selection of his subordinates. Most probation officers serve as long as their services prove satisfactory. An increasing number of States, now not far from one-half, have some central public welfare agency for oversight, or at least for collecting statistics for juveniles or adults or for both; a few have a special probation agency, New York in 1907 being the first.

In some States the number of probation officers is left to the proper authorities; in some it is limited, perhaps bearing a fixed ratio to general population. For the most part the number is inadequate, there being at times one probation officer for 100, or even 200 or more, cases. Within recent years the number of such officers has greatly increased.

The period of probation varies from three or four months to five years, the average being perhaps nine months for mis-

demeanors, and perhaps twice as long for felonies. The period may also vary according to the offense. If the law permits, some courts purposely leave the time indefinite. There is considerable divergence in the practice of different judges. In some States probation is not allowed for certain specified offenses, or with respect to previous convictions. In some jurisdictions there is a tendency rather to limit the scope of probation, and in others to extend it. Provisions of probation rules are dissimilar in different areas.

Proper psychiatric examination is as yet provided but to a limited extent.

OPERATIONS OF PROBATION

In practice probation appears to be more likely to be granted in the case of offenses against property for gain which are not attended with violence. It is also used with comparative frequency in the case of offenses against one's family. It is resorted to in less measure with regard to offenses against the person. It is availed of but sparingly in respect to the offenses of the professional criminal. The approximate proportions for different offenses in Baltimore (1923-1927) are as follows—the proportion for all being one-eighth: embezzlement, one-half; fraud, one-third; forgery and carnal knowledge, three-tenths; receiving stolen goods, one-fourth; larceny, one-sixth; rape, one-seventh; manslaughter, one-eighth; and burglary, one-tenth. The proportions are very small (less than one-twentieth) for arson, assault, felonious entry, murder, and robbery. In Cincinnati (1926) the proportions given deferred sentence range from one-eighth to one-sixteenth in the following order: larceny, homicide, burglary, forgery, robbery, and assault. The offenses with respect to which guilt is found, and which are allowed suspended sentence, in New York State (1926), with their respective proportions, are in order as follows (total, three-tenths): grand larceny (third degree), nine-twentieths; miscellaneous offenses, two-fifths; fraud and forgery, two-fifths; burglary (first degree), two-fifths; grand larceny (second degree), three-eighths; grand larceny (first degree), one-third; burglary (third degree), three-tenths; carrying concealed weapons, three-tenths; sex offenses, one-fourth; assault (second degree), one-fifth; robbery (third degree), one-fifth; assault (first degree), one-tenth; burglary (second degree), one-twentieth; robbery (second degree), one-twentieth; manslaughter (first degree), one twentieth; rob-

bery (first degree), one-twentieth. In Pennsylvania (1927) probation is allowed with respect to local penal institutions for different offenses in order as follows: desertion, nonsupport, violation of liquor laws, larceny, violation of automobile laws, burglary, and sex offenses. Among misdemeanors in some cities one-half of cases of probation are for offenses having to do with domestic relations.¹

Probation is extended considerably more frequently in cases where a plea of guilty—whether as to the offense charged or as to a lesser offense, though the more frequently as to the former—is offered by the offender than in cases where the offender is convicted after a plea of not guilty with an attendant court trial. Sometimes the proportion for the one is double or more for the one than for the other. In a considerable number of courts probation is but sparingly employed when a conviction is obtained despite a plea of not guilty. In some cases probation is allowed to those who have previously offended—perhaps as many as one-third being of that character.

PROPORTION OF OFFENDERS ON PROBATION

The proportion of all offenders before the courts who are placed on probation (together with suspension of sentence) varies greatly among different States and among different communities. The proportion for offenses in general may range from a very small percentage to two-thirds or three-fourths, or possibly even more. For felonies it seems in different communities to be about one-tenth, one-fourth, one-third, or even one-half. For misdemeanors the proportion is much higher. In juvenile courts the proportion of offenders placed on probation (apart from dismissed cases) is in certain instances not less than nine-tenths. In certain States there are a greater number of offenders on probation than in prison, sometimes several times as many.

The proportion of offenders on probation is steadily increasing. In certain States within a period of half a score of years the proportion has increased twofold or threefold; or the proportion of inmates of penal institutions has been reduced by one-half or two-thirds. It is estimated that at present not less

¹ Pennsylvania Crime Commission, Probation and Parole of Offenders, 1929. See references in Chapter XXII. Much of the material as to the present operations of probation is from the publications of the National Probation Association.

than a quarter of a million persons are on probation in the United States in one year. This is in contrast to the approximately one hundred thousand adults (or approximately one hundred and forty thousand adults and juveniles) who are found in penal or correctional institutions, or to the approximately three hundred and sixty thousand adults (or approximately three hundred and seventy-five thousand adults and juveniles) who are committed thereto in one year.

RESULTS OF PROBATION

Statistics as to the success or failure of probation relate mainly to happenings to an offender within the prescribed period of probation. They have little reference to subsequent conduct, including possible misconduct, on the part of the offender, perhaps in some other jurisdiction, or to the eventual outcome as to him. For this reason figures as to the "success" of probation are to be taken only in a qualified sense.

Considering the matter merely with respect to the actions and behavior of the offender during the period of his probation, it is to be said that probation in the United States has been attended with at least a fair degree of success. The measure of this success is largely the freedom from subsequent arrest of persons on probation or general improvement in character or conduct for a given time, as one year or more. According to this standard, the proportion of successful cases is seldom found to be less than two-thirds or three-fourths, and sometimes as high as four-fifths, whether in respect to juvenile or in respect to adult offenders. Occasionally it is as low as one-half. A small proportion (hardly over 5 or 10 per cent) may be discharged from probation, though reported unimproved. Most of the remainder, consisting usually of from one-twelfth to one-sixth, or occasionally one-third, have to be brought before the court a second time, for the most part charged with a new offense. A small proportion—perhaps close to one-twentieth—abscond or escape, or are never heard of again. The latter proportion is not much in excess of the proportion for those in prison who escape—4.7 per cent for prisons and reformatories, and 7.5 per cent for juvenile institutions. With some children probation seems to have accomplished little.

Probation has perhaps proved most satisfactory when applied to such offenses as wife desertion, nonsupport of family, violation of liquor laws, and certain offenses as to property. When failure

occurs, it is often to be set down to application to unfit cases. Almost one-half of failures are said to be cases of mental defectiveness, drug addiction, and chronic inebriety—all manifestly unsuited for it. Unsatisfactory results are also at times to be found with respect to its use for second offenders. No small part of the failure of probation is to be laid to the character of one's surroundings, to some extent not the fault of the offender himself, but rather of society at large.

There have undeniably appeared weak spots in the working out of probation. As with parole, the actual conduct of probation, especially with regard to methods of investigation and supervision, varies greatly in different communities. As yet in the majority it is not to be characterized as of a high order. The system has too frequently been abused or misused, especially in its application after insufficient knowledge as to the offender and his condition, in its employment with unsuitable cases, and in its improper or lax administration. Too often, also, pressure, political or other, has served to warp it, to weaken it, or to bring it into disrepute. There have been unhappy situations when the system has been tried without adequate or fit probation officers. In not a few cases probation officers are insufficiently trained or are selected with insufficient care. In some cases visits from probation officers are infrequent or seldom. In some cases the probation officer is in limited touch with the movements in general of probationers. Now and then one is allowed probation on a given case when already so on another. In but few communities is there adequate or effective case work or procedure of an intensive character.

Conditions, however, with respect to probation are for the most part undergoing improvement, in some communities a relatively marked advance having been achieved. Improvement is perhaps most pronounced as regards the personnel of probation officers. Higher and higher standards are being introduced, and the work is becoming more and more of formal character. A distinct movement is in evidence towards placing the work upon a really professional basis. A not negligible consideration in the entire question is that through probation something is being done quite different from the creation of an offender with a prison experience, and perhaps with anti-social qualities already developed.

Though a fully effective system of probation has not as yet been perfected, the policy is now winning a place for itself in criminal procedure. Its principle is sound, and its success in practice will

depend upon the intelligence with which society applies it to dealings with the offender. The system is still in a process of development, and much as to well-ordered operations is to be learned from experience. Immediate needs are further standardization of procedure, and the keeping of full and proper records, such as are capable of analysis and comparison. Administrative levels are still below what are necessary. The policy in general still lacks a full measure of public appreciation. But the nature of probation is becoming better understood, and a technique for it is being worked out. Before it doubtless lie higher and more worthy achievements.

PART X

PRIVATE ORGANIZATIONS CONCERNED
WITH THE OFFENDER

CHAPTER LV

PRIVATE ORGANIZATIONS INTERESTED IN CRIME AND PENAL CONDITIONS

SPECIAL ORGANIZATIONS CONCERNED WITH CRIME OR PENAL CONDITIONS

The chief organization in the United States concerned alike with the scientific study of criminology and penology, and with practical measures for the suppression of crime and the improvement of penal conditions, including in particular consideration of penal institutions, causes of crime, criminal legislation, and care of the ex-prisoner, is the American Prison Association, founded in 1870. It is composed to a large extent of prison officials, but with other interested persons also embraced in its membership. Allied with it are several minor organizations devoted to some special aspects of the subject.

In certain States there have been created special prison associations for the purpose of ministering to or aiding in various ways persons confined in prison and their families, and also often for the purpose of assisting persons on their discharge from prison. They are frequently engaged in parole and probation work, and in the prevention of crime generally. One special service has been bringing before the public some aspect of prison conditions in need of attention. The first such body seems to have been the Pennsylvania Prison Society, formed in 1776. Like organizations, but covering a group of States, are the several Howard Associations, interested particularly in prison reform and work for ex-prisoners, together with special religious activities. There are also some State probation associations.

Two national organizations interested in special phases of the crime problem and of criminal treatment are the National Probation Association (1907) and the National Committee on Prisons and Prison Labor (1909), the latter body having one or two affiliated or subsidiary organizations. Another special organization to be mentioned is the National Society of Penal Information. There are also associations of persons charged in

some way with the enforcement of the criminal law, as prosecuting officials and police executives. (In the International Association of Chiefs of Police there is a special committee as to uniform crime records.) An organization engaged in scientific research as to crime, its causes, and measures for its treatment and prevention is the American Institute of Criminal Law and Criminology (1909).

A development of recent years has been the creation of special organizations dealing with crime, whose main task has been the more or less intensive investigation of conditions as to crime within a given area, and the formulation of policies for dealing with the problem—and also in some cases to keep watch as to the handling and disposal of criminal cases before the courts. They have been organized in a number of States, and in certain cities. There have also been created certain national bodies upon the subject for the country as a whole. Most of these organizations have been formed and directed under private auspices; but in some cases they are public bodies, generally under the name of commission. (A notable public body is the National Commission on Law Observance and Enforcement, created in 1929.)¹

GENERAL BODIES CONCERNED WITH CRIMINAL OR PENAL CONDITIONS

Apart from the activities of special organizations, private interest in the welfare of prisons has not gone far. Some religious bodies have special work for prisoners, for the most part preaching, celebration of religious services, or religious visitation for individual prisoners. Sometimes, through outside initiative and endeavor, religious organizations are built up among prisoners for their spiritual and moral betterment. Religious work in general in prisons has been of limited extent and character. The church has by no means measured up to its opportunities here.

Concern of other general bodies has been mostly limited to the providing of some form of entertainment for prisoners. Benefactions from private sources for prisons have been rare—whether for the enlargement or betterment of institutional facilities or for the promotion of the welfare of prisoners. Occasionally funds of limited amount are provided by outside sources for the promotion of psychiatric work among prisoners or of

¹ In international organizations concerned with crime or penal conditions the United States usually has representation.

probation or parole work, or for the study of some phase of crime—especially of juvenile delinquency (in a few instances under public auspices as well). By certain social service or religious bodies assistance may be offered courts, especially with younger offenders.

A greater or less amount of special attention is paid to the matter of crime and delinquency by practically all organizations concerned with public welfare, social work, recreation, law, and mental hygiene, and also by some organizations concerned with business or commerce.

ORGANIZATIONS CONCERNED WITH JUVENILE DELINQUENCY

Private agencies, apart from regular probation agencies, that have been of great aid in guiding and protecting delinquent or endangered children, especially in connection with juvenile courts, are the Big Brother and Big Sister movements, created in 1904. They sometimes have a local paid staff, besides their volunteers. Children's aid societies, societies for the prevention of cruelty to children, humane societies, juvenile protective societies, and like organizations have frequent opportunities to intervene in behalf of ill-used or abused or unprotected children, or children likely to develop anti-social tendencies. Some of these organizations often have direct concern with juvenile delinquency and its treatment. Certain of them are becoming more concerned with preventive work with potential criminals or underprivileged children. Most private societies have their work confined to cities.

ORGANIZATIONS ESPECIALLY CONCERNED WITH EX-PRISONERS

For the large number of persons in the United States who have served prison terms and are now back in the midst of society—there being some 45,000 adults released from prisons and reformatories alone each year—but limited attention and consideration have been afforded. Often the ex-prisoner is without money or friends; and often there is none to hold out a helping hand to him. Often he is left to his own devices—which perhaps become those of the offender who errs once more, or who errs more and more, or who in time becomes the hardened or professional criminal. To a large extent the ex-prisoner is passed by in human society.

Though there have been sporadic or restricted instances from

the beginning of American life on behalf of those discharged from prisons, there has on the whole been but comparatively little organized work by private agencies in the matter. Some of the special prison associations, as we have seen, are concerned to some extent with the welfare of ex-prisoners no less than with that of prisoners in prison. In a number of cities there are special societies for the care of ex-prisoners, but for the most part with limited resources.

A particular activity of some private organizations has been work in a certain degree with parole or probation, especially in connection in some way with State-conducted operations. This form of work is being taken over in ever increasing measure as a public undertaking, with consequent lessening of the need of private action here; but there should never be lost the friendly touch and the incentive to public action which the private body can provide. There will always be a great and peculiar opportunity for it in this field.

There are quite a number of organizations, rather of national character and scope, besides special State associations, which include work for both prisoners and ex-prisoners as part of their regular tasks. Their activities, apart from the extension of general aid and encouragement, are fourfold: service in prison of some kind or other; aiding of prisoner's family during imprisonment; securing of employment at discharge; and providing of temporary shelter at discharge, a few organizations having special homes for the purpose. Among private organizations, notable work in behalf of ex-prisoners has been done by the Salvation Army and the Volunteers of America. By charitable, philanthropic, and social welfare organizations in general there are sought beneficial contacts with those who have been in prison and with their families. (By the Good Will Industries, a semi-philanthropic organization, ex-convicts are received as one of the classes which it particularly desires to aid.)¹

How many ex-prisoners have been reached in all by private agencies interested in their welfare, and what have been the general results of these activities, we have little means of knowing.

¹A special agency for ex-prisoners in some cities is known as the Marshall Stillman Association, with efforts at both reformation and vocational preparation.

PART XI

POSSIBLE MEASURES FOR CONTROL
OR REDUCTION OF CRIME

CHAPTER LVI

POSSIBLE IMPROVEMENTS IN CRIMINAL PROCEDURE

SHORTCOMINGS IN CRIMINAL JUSTICE IN THE UNITED STATES

A rather heavy bill of indictment is to be drawn against criminal procedure in the United States, or against the legal machinery available for the apprehension and prosecution of offenders. Criminal law in dealing with those who violate it should be characterized by accuracy and celerity of operations and by certainty of results; justice should proceed in orderly fashion, with dispatch and with efficiency. In the United States such is far from being the case. Criminal law in this country is wanting in a number of respects for its successful or proper functioning.

Criminal justice fails to apprehend a very considerable proportion of offenders; it fails to bring to conviction and punishment a very considerable proportion of those who are apprehended. Many criminals escape entirely the clutches of the law; many who are caught within its meshes eventually find some opening through which they pass to liberty. In one way or another is it possible for justice to be checkmated or defeated. Sureness of punishment for crime is to be expected for only a limited portion of offenders.

Officers of the peace are sometimes inefficient or incompetent. Forces for the discovery and detection of crime are not infrequently outdone by the cleverness or astuteness of criminals. Now and then the very guardians of the law, engaged to protect society against the criminal, are found actually in collusion with him. Methods of tracing and unriddling criminal doings are often crude and backward. Means for recording and identification remain in a low state of development.

The criminal law to a large extent lacks essential information as to matters it has set out to deal with. It has but limited knowledge of the actual extent of crime or of the conditions from which crime springs. Vigorous and decided policies for it are held back in corresponding degree.

When the engine of criminal law has been set in motion against the accused, at different stages are obstacles encountered for its further operations, in consequence of which sometimes prosecution is brought to a halt or gotten rid of. The machinery for the pursuit of the offender against the law often moves with slow and creaking steps.

Criminal law is short of definiteness and certainty. It is often lacking in simplicity and directness. It is often vague and indecisive. It is often involved and complex. It is often wanting in exactness. It is often lacking in naturalness and straightforwardness. It is often of too formal and perfunctory a character. It is often over-technical. Its rulings may not be fixed and absolute, but may be subject to later revision or overturning. Its protracted appeals hold off final determination, and keep in suspense and uncertainty. It is forgotten that sureness of punishment is of greater moment than is severity.

Criminal law has in its making too little of the scientific spirit and of the scientific method. It is based too much upon tradition and past attitudes. It is too much inclined to follow archaic or obsolete practices. It is too little in touch with modern methods of research for the formulation of its policies, and is without adequate basic information for the position it takes upon certain issues. Its evaluations are not sufficiently in accordance with the principles and standards made use of either in scholarly or in business inquiry.

Judicial procedure is lacking in coördination and unity. Between different parts there may be incoherence or inharmonious relations. Factors and elements in the prosecution of an offense may be in relatively little touch. Courts may have too little power to facilitate or simplify or advance proceedings. Inferior courts may not have proper connection with higher courts. Inferior courts may have too wide an influence upon criminal matters generally.

Criminal law lacks speed and expedition. It is slow and dilatory. Some of its processes cause delay and procrastination, and interfere with the even movements of justice. Its tardiness of procedure is damaging alike to its efficient administration and to its standing with the people.

Criminal procedure is expensive—both to the state and to the private parties concerned. It bears most heavily upon the poor. Much of the costs which have to be paid for it are due to the circumstance that some of its stages and some of its methods of procedure are outgrown, are unnecessary, or are wasteful.

Not a little of its expense is chargeable to its overwrought organization or to its long drawn-out tactics. From its slow and ineffective movements a serious burden has to be borne by the tax-payers. Not only is there waste in money, but in human effort and energy and patience.

Court procedure is often lacking in dignity, and in the solemnity befitting its place. It does not have the impressiveness or the commanding position to which it is entitled in the community.

In criminal procedure methods and aims are too much of an objective nature, with too little regard for the condition and needs of the offender.

Evidence presented for criminal determination is not always reliable, and is often not based upon scientific principles. There is too little resort to psychological discoveries of a subjective nature. Ascertainment of mental states is but little attempted, and but little understood. The situation as to pleas of insanity is at times almost intolerable.

Criminal law is too sensitive to the rights of the accused. Measures for his benefit or for his protection are carried too far. He is favored at the expense of the state or the public. The prosecution is not given a fair chance, but remains in an unequal position. It is hobbled at many stages of procedure. Means for the protection or aid of the accused are even abused.

Methods of securing accurate and definite determinations are not always fitted to modern conditions. Criminal proceedings may not be a serious, resolute quest for facts and for even-handed justice. The entire proceedings, and especially the trial action, may become simply a contest between the skill and cleverness of opposing sides. There may be little in the way of judgment upon actual issues. There may arise a sort of sporting theory of justice.

Criminal proceedings may be lacking in the impartiality and independence which are supposed to be their very pillars. Ulterior considerations, possibly political, possibly of other kind, may at times creep in and influence issues. Quite too often the rich with their riches have the advantage over the poor with their poverty. Into the sacred precincts of the dispensation of criminal justice graft and corruption may intrude their ugly heads.

Criminal justice is not sufficiently jealous of what goes on under its high name; its ethical standards are at times allowed to fall to too low an estate.

Criminal justice has in insufficient measure the support and

backing of the public, not merely in the matter of proper respect, but in its willingness to do its part towards the proper functioning of justice.

In its treatment of the offender whom it has taken in hand, criminal justice in but small measure yields him to the treatment of experts and specialists, as is the case in nearly all other fields of human activity to-day. Nor does it make all parts or stages of its treatment an interrelated whole, from the beginning to the end, in the law, the courts, the penal or correctional institutions, in probation or parole proceedings, or wherever else it touches him.

Criminal law is not in a position of leadership or of authority in the onward march of civilization.

There is much that can be done by way of improvement and reform in the criminal law of the land.

In this unhappy picture there is one ray of light to be discerned—the increasing efforts to better the criminal law. In most States of the Union there is being effected a greater or less improvement in the situation, or an improvement in a number of respects. The growing discontent in the matter is beginning to tell, and it is in this that a brighter day appears for the future.¹

BETTER AND FULLER RECORDS AS TO CRIME

As the first step in improving procedure with respect to criminal prosecution, there will have to be far larger and far more accurate knowledge than now exists with respect to the conditions of crime. The number of crimes committed or reported, the number of arrests made, the results of the several judicial processes involved, the general and ultimate effects of imprisonment and of fining, of probation and parole—matters determined now in relatively small degree—will have to be discovered and given their due place in the business of dealing with crime. Adequate records are to be kept by all having officially in any capacity to do with crime. These records will have to be analyzed and coördinated, and built up into an illuminating body of fundamental facts regarding the extent and character of crime conditions.

¹By the American Bar Association, as well as by the bar associations of many States, measures of reform or improvement of the criminal law have been instituted or are under way. By the American Law Institute a uniform criminal code has been prepared.

Not only to each stage of criminal procedure is consideration to be devoted, but to the procedure in its entirety. There should issue a clearer understanding of the proportion of offenders who commit their crimes with impunity, and of the proportion of offenders whose cases fall by the way before coming to trial or before final determination, or before reaching the stage of punishment—and, so far as possible, the reasons therefor. It is to be ascertained at what point proceedings are to be tightened up or mended or overhauled. An incidental discovery will be that if a large proportion of accused persons are discharged from the hold of the law, it means either that too many innocent persons are being arrested or that too many guilty persons escape.

Along with the measurement of the volume of crime and of the disposition of criminal cases, there will have to be prepared a rather broad record as to the character and the antecedents of the offender, and as to the circumstances of his offending.

Together with these operations there will have to be set up a more or less uniform classification of crime, with better standardization in general, not only as concerns a single State, but as between different States. There will have to be fuller coöperation between the Commonwealths in making available and utilizing facts as to crime. Indeed, a pressing need exists for a central agency for the collection of necessary data as to crime and criminal conditions as a whole. The one agency for the purpose is the Federal Government. It may gather facts upon the subject for the nation, acting at the same time as a bureau of information or clearing house for the different States. Valuable, but limited, work is now being done by certain Federal agencies, especially in the compilation of statistics as to prisoners in penal institutions; the activities of the National Government should be greatly enlarged, and should cover various matters of which at present so little is known.

The need of action for securing better records in respect to crime, and what may be done in the matter, is now being shown in rather effective manner by the work of some of the special organizations which have been created for the purpose of studying in a scientific fashion different matters bearing upon crime.

BETTER MEANS OF CRIMINAL IDENTIFICATION AND DETECTION

As a further measure to give us command of the situation as to crime, and to enable us better to cope with it, especially in

its detection, there will have to be brought into being wider and more effective means for the identification and apprehension of criminals, wherever they may be located. For success the prime requisites are speed of operations and accuracy of results. This work is not to be for cities only, as it has so largely been in the past; it should be made a distinct task of the State, the political body which is the final authority in the formulation of policies as to crime. No State should rest content without having, for the proper treatment of crime within its borders, a bureau of criminal identification and a central detective agency, all to be placed at the disposal of a local community at its need, but also to be engaged in a general, State-wide plan of action. (With better means of criminal identification there will be, for one thing, less need for the "third degree.")

In dealing with the problem of criminal identification and detection, there soon appears the great importance of larger and fuller coöperation among the different States. This is true no less for the ferreting out of crime throughout the country, but for the prompt handing over of criminals to the rightful jurisdiction. Not merely is comity called for in the matter, but some form of joint action as well. It will have to be recognized that criminal prosecution can no longer be of limited local character, when the issue of crime now transcends State boundaries, and when the operations of criminals go far beyond any particular territory—when these operations may in fact be expected to assume an ever widening radius.

With respect to the matter of criminal identification there is opportunity anew for usefulness on the part of the Federal Government. By it a bureau for the purpose should be established, possibly under the Department of Justice, which should coöperate as far as possible with individual States in securing and collecting means of identification of all charged with offenses against the law. Apart from its general value in the discovery and apprehension of criminals, this will be of vast assistance in ascertaining the extent and character of recidivism in particular in the United States. Great service could also be rendered in the international aspects of the matter.

BETTER CODIFICATION OF CRIMINAL LAW

Criminal procedure is particularly weakened by two circumstances—on the one hand, by the high technicality of many criminal codes, and, on the other hand, by the lack of uniform

classification of crimes, or the lack of uniformity in the criminal laws of different States. No small portion of criminal law is unsystematic, indefinite, complicated, over-technical, often carrying too much of the deadwood of the past, or clinging with too tight a hand to the customs and attitudes of bygone days. In their preparation modern scientific principles and methods have had but little part—though in some States there is a decided movement in this direction. Statements of the law, including definitions, are often lacking in simplicity and directness. There is often wanting a clear distinction between different forms or different grades of offenses; and sometimes the distinctions drawn seem of little weight. Each State having its own criminal code, and having power to act independently in its dealing with crime, there may be great differences in both substantive and procedural criminal law, all adding to the confusion upon the subject, and in the end possibly at times imperiling criminal justice.

The criminal code could well in no small part be simplified and restated, based in larger measure upon actual modern conditions. The attempted distinction in particular between felonies and misdemeanors is hardly called for longer. Definitions as to criminal deeds should be made of rather generalized form—with less of detail, less of particularizing, less of precise wording, less of a fixed mold into which certain acts must fit if they in their summation are to be declared crimes. For the penalization of different offenses (apart from possible subjective considerations), especially as respects their seriousness or their danger to society, a more systematic and a better-reasoned basis should be found.

The gain would be vast if there could be larger agreement and harmony between the criminal laws of the several States—or far better still, if some approach to a uniform criminal code could be effected. Just as in civil actions or in certain phases of civil procedure, especially in the fields of commerce and finance, there has been established greater or less uniformity, so there might be like action in the criminal law, with even greater and more far-reaching benefits.

There is one special subject which in the criminal law should receive full recognition, namely, the workings of three great modern movements—the indeterminate sentence, parole, and probation. They are to be regarded as of tremendous value in the future treatment of the offender against the law, and should have all the preliminary study before necessary statutory action is taken. They are fighting for a place in the formulation of

policies to deal with crime, and their principles and processes are entitled to the most careful examination. But nothing should be attempted regarding them unless at the outset there are predetermined high standards and high levels of administrative operation.

In the enactment of all criminal legislation there are certain things that should be looked to as guiding beacons. Careful study should be made of the character of the act which is to be made an offense, and of the need of its being given a place in the criminal code. Attention should be devoted to the state of the public mind, and to its attitude toward the proposed new statute. All criminal legislation should go hand in hand with education.

GREATER CONSIDERATION OF SUBJECTIVE CONDITIONS AS TO CRIME

Hitherto the conception of crime has been chiefly or largely of an objective nature—crime being simply and directly in relation to the nature of the act committed, and its gravity or seriousness being measured by this standard or appraisalment. In the highly developed rules of evidence in general the basic inquiry is whether the person accused of crime is guilty or not guilty—with little or no reference to his condition or character and with little resort to subjective tests. Under present tendencies this conception is undergoing marked modification. The main issue is coming to be regarded, not so much the actual deed perpetrated, but the state, especially the mental state, of the perpetrator, this state including emotional make-up, volitional control, different neuroses, nervous or neurotic backgrounds, various psychopathic settings—the general psychological condition of the person charged with crime—or whether the crime charged is rather to be regarded as merely symptomatic of his condition. It is this condition which is being increasingly realized as of fundamental concern in the fixing of answerability for misdeeds against society and of the treatment to be accorded the offender therefor by society. The ground or the test for determining responsibility for criminal action is thus being definitely shifted. Subjective considerations now become of primary worth; and responsibility rather relates to the condition of the individual involved. Here is believed principally to lie the key to the problem of a large part of criminal conduct. This attitude, at present with but slight place in dealings with the offender, will have ever increasing attention in the coming years.

From this new approach to the matter it is not to be thought that a person found to be of an abnormal condition is to be absolved from his misdeeds or from the consequences of his actions. There may the rather be determined in the procedure the character of the treatment to be accorded him—to what extent it is best for society, not merely for himself alone, that he be allowed to be left to himself and to go about unrestricted, or to what extent he be placed under confinement, or his actions and movements placed under greater or less restraint—or whatever other treatment is found appropriate or suitable or feasible. Sometimes custodial treatment for a greater or less length of time will be found the one desirable or safe resort. Not only may the actual offender, but the potential offender as well, be held under constraint, in the interests of society.

Just what one's condition will have to be to relieve one from what is known as punishment for crime in the legal sense, or to require some sort of restraint while such condition continues, will remain a most difficult problem, a social problem in some respects overshadowing all others. Initial efforts to meet it will have to be through what we have in the way of psychiatric and similar tests. At the same time all due standards will have to be established for those who hold themselves forth as practitioners of the important profession involved in the making of such tests.

HIGHER LEVELS OF POLICE ADMINISTRATION

The police force or the officers of the peace, standing nearest the criminal, and constituting at once the first line of defense against his depredations and the primary agency for his apprehension, is to be given basic consideration in the machinery of criminal prosecution.

The head of the police force should be a person of exceptional qualifications—to be regarded in exceptional degree as a social engineer. He should be able and incorruptible, and entirely free from political touches, whether local or of wider bearing—something far from being generally the case to-day. He should have much discretion in the control of his force. Discipline, firm and determined, is to be secured at all hazards. The tenure of office must be of sufficient length—in general permanent, or at least during good behavior and efficiency. Too frequent changes in the head of a police department have far-reaching and demoralizing effects.

The police force should be a picked body of men. Its qualifications—physical, mental, and moral—should be of a relatively high order. Many of the calls upon it require physical strength and mental alertness and resourcefulness, and, in addition, courage. But the greatest dangers to which it is exposed are those of a moral kind. From its situation in the life of the community nothing else is to be expected. To its moral stamina there is a constant challenge—temptations of various types, direct and indirect, possible bribery, graft, or other form of corruption, besides policies in the enforcement of unpopular or long-dead laws and divers political influences.

Members of the force should be selected for their fitness alone. No other considerations of whatever kind should be permitted. Strict civil service rules are necessary. At present the police force of many cities is seriously weakened by too rapid a turnover, due mainly to political influences or low pay. In some cities only the smaller portion of the force has served more than a few years, the larger part thus being with little experience.

For an efficient police force in these modern times special training is indispensable. In many communities this is quite lacking. Police training schools, while increasing in number, are still rather the exception. Even in some of the schools that have been established the curriculum is far from being adequate or the instruction of a high order. In a fully developed school attention may be given to criminology, including criminal procedure; principles and nature and use of evidence; distinctions between different kinds of crime; social causes of crime; elementary psychology, including mental impulses, emotions, stresses, and reactions, motives in causation of crime, abnormal behavior, methods of improving memory and perceptive powers, involved mental processes following certain stimulation of emotions and instincts, elementary principles of psychiatry, psychopathic laboratory methods, etc.; elementary physiology, including knowledge of human anatomy, anthropometry, physical abnormalities, stigmata, defects and their possible connection with crime, structural changes in body, physical distinctions between race and color groups, etc.; civics; geography; certain practical methods of detective work, as methods of trailing suspected persons, methods of covering up crimes, or of concealing identity, methods of committing crime and of evading detection, use of criminal tools, firearms, handwriting, etc.; methods of physical offense and defense; methods of criminal reporting, including the use of statistics; different forms of police social service; etc.

A particular need in connection with the police is a better trained and more skilled detective force. Detective work in the United States has not as yet been put upon a fully scientific footing.

There should also be a closer connection between the detective agencies and the office of the public prosecuting official. The detection of crime and the securing of evidence may be in the hands of the police at a time when proof is fresh; but there may be little systematic coöperation between the two criminal agencies. Much of the benefit of the work of detection may be lost before a case is finally passed upon.

Probably in most communities better police protection could be secured by an enlargement of the force—something of which the tax-payers are to be convinced.

The office of the sheriff (and of other county peace officers as well) also requires overhauling in the interests of improved criminal procedure. The sheriff as a usual thing has too many duties, many of purely civil nature. There is little way to hold him responsible for ferreting out crime. He is little trained in modern police or detective methods. His is rather a political office, of but limited tenure, and generally to be sought by political methods. The fee system as to action in criminal matters has had too much place in his compensation.

The sheriff should be appointed to office, and only in consideration of his fitness and training; he should be removable for cause. He should be in a larger sense a State officer, not merely a local county officer. With the extension of the rural police system there may be less need of the sheriff in the actual keeping of the peace. A rural police force has now become indispensable for most rural communities. A central State detective bureau can no longer be dispensed with. In some areas the functioning and authority of private guards demand attention.

GREATER EFFICIENCY IN OFFICE OF PUBLIC PROSECUTOR

The office of the public prosecuting official is of the utmost importance to the state. It is upon him that the state must depend for the prosecution of offenders against its laws, and for the securing of justice in its behalf. No small discretion and no small power are in his hands from the beginning, both peculiarly liable to misuse or abuse. At many stages of criminal proceedings it is largely his attitude and his action which determine whether or not a given case shall fail. The securing and organization of

evidence largely devolve upon him. With the grand jury he is almost the only source of advice. Though theoretically the servant of that body, he often in reality overawes it. At the trial it is only by his energy and ability that the state's case can have adequate presentation. Upon the competency, good judgment, and zeal of the prosecuting official hangs in large measure the proper functioning of criminal justice.

By the inferior personnel of the prosecuting officers in relation to their opponents in legal battles, justice may be materially obstructed. They are often little beyond the years of youth, with little experience, and unused to the ways of intricate and complex legal procedure. Not infrequently their position is regarded as more or less of a makeshift to tide them over till better days can be seen in their profession. The opponent whom they may have to encounter and against whom they may have to match their wits may be a veteran of the bar, a clever, skilled "criminal lawyer," distinguished for his ability to free his client. In the court combat between these two types of attorneys it is the state, the public, that must usually suffer loss.

The prosecuting officer of the public should be possessed of relatively high qualities, both legal and personal. He should be afforded ample equipment for the successful functioning of his office. This should include adequate clerical force and adequate library facilities. There should be available some means to assist in the detecting of crime and in the apprehension of criminals—especially when no police force is at hand for the purpose. The prosecuting officer should have a relatively long term of office; possibly he should be appointed thereto. The fee system should have no place in his compensation. All political or other untoward influencing should be something far removed from him.

The prosecuting official has perhaps at times too much discretion as to *nolle prosequi* or dismissal of action against an accused person, or as to the permitting of a plea for a lesser offense. Dropping of cases or discontinuance of prosecution is not always occasioned from good motives, but may at times be induced by influences not of meritorious character, as political considerations, desire to have a case beyond possibility of upsetting, desire to shift responsibility to some other public official, etc. The prosecuting officer is, practically speaking, sometimes allowed to play the part of a judge in the matter. About this power certain safeguards should be thrown. In particular, when it is invoked, the reasons therefor should be set forth in writing, and possibly given conspicuous notice. The court may be per-

mitted to investigate the matter on its own account, with power to decline to dismiss a case if it sees fit. It is also to be remembered that the acceptance of a lesser offense in place of a more serious one may really result in a miscarriage of justice. It is also necessary for the prosecuting officer in the prosecution of his cases not to misplace his emphasis, or to choose wrong ones for foremost attention.

As is the case with Federal matters, one prosecuting officer should be in charge of a criminal case throughout—from the time of its discovery to its final disposition in the courts—thus securing greater unity, continuity, and efficiency. If he has no connection with the case at the earlier stages, valuable evidence may be lost, or the state's case otherwise injured. The prosecuting officer should attend to both felonies and misdemeanors. In many cities the prosecuting officer at a formal trial is a county officer, while at lower stages he is a city officer, an arrangement with poor coördination. Probably the best solution of this difficulty is the combination or unification of county and city government, at least for purposes of criminal administration.

The prosecuting officer should hold himself in readiness and should be freely called upon for consultation as to probation, pardon, parole, length of sentence, etc., with respect to offenders whom he has once prosecuted.

To secure the greatest efficiency in the prosecutor's office, there should perhaps be some central supervising agency, possibly under the direction of the Attorney-General of the State.

POSSIBLE USE OF PUBLIC DEFENDER

In most States when an accused person is unable to pay for a lawyer for his defense, one may be assigned by the court for the purpose.¹ Few lawyers in general care to undertake the task of defending one at the direction of the court, and the work has fallen mostly to lower-grade or to embryo lawyers, who may, perhaps, welcome the experience for itself.² Often when a lawyer

¹This is the rule in perhaps two-thirds of the States as to felony cases, and in perhaps somewhat over one-half as to misdemeanors. It is practically always the rule as to capital cases. A lawyer thus appointed serves rather as an official of the court, though of course at the same time he is "counsel" for the accused. In a little over one-third of the States no compensation is provided for such service. In those States allowing it, the pay is usually meager, except in capital cases, where it may range from \$25 to \$500.

²At times it even happens that "steerers" attempt to direct such cases into certain channels.

is assigned to a criminal case, he gives little time to it, possibly putting in an appearance only at the actual trial. The "counsel" which the defendant so sorely needs may be quite wanting.¹

To meet in more befitting manner the situation as to counsel for an accused person—in his interests and in those of the public alike—there has been proposed as a special appendage to the court a public defender, an attorney looking after the general interests of accused persons, and serving as a regular public official, perhaps paid in part at least from public funds.²

¹ Though the services of counsel are supposed to be without cost to the accused, it remains possible, nevertheless, for an attorney so acting to wheedle, perhaps at the time, perhaps at some later date, something from him or from his relatives.

² The chief objection to the arrangement probably lies in its supposed expense—though this need not be materially greater than the assignment of special counsel for individual cases. In many communities, especially the less populous ones, the plan for the present at least might be looked upon as simply an addition, perhaps an unnecessary addition, to the machinery of criminal justice. There are a number of advantages in the public defender system. It is in the interests of public justice. There is less occasion for unnecessary delays or wranglings, and proceedings are expedited—in the long run with less expense to the state. A given situation may the more quickly be understood. Cases may be sifted down, the worth of each determined, and the actual facts got at. An investigation may be made, with a report to the court, if advisable. The accused is the more likely to tell the full truth. A plea of guilty when proper may the better be secured. Sentences may be kept within bounds when otherwise likely to be excessive; and probation or other particular treatment may the more readily be obtained when demanded by justice or by considerations of the well-being of the accused. A public defender, acting as a public official, may command greater respect, and is perhaps in better position to secure the best results, than one who serves in a private capacity. The general tone and dignity of the court may be raised. Parasite lawyers and lawyers of a low type who may have preyed upon the position of the accused or upon his relatives no longer have place. There is less likelihood of legal trickery or artificial defense. There is less opportunity for the "sporting theory" of justice to prevail. The public defender is less likely to be influenced by undue considerations—he has no personal or professional reasons for securing acquittal of a guilty person. The poor in particular who are able to engage no counsel at all, or only incompetent or inexperienced counsel, come to have a better impression of and confidence in the law. They can feel a greater assurance of justice, and not its denial. There is also possibly an appeal to a more or less dormant sentiment that in justice no one should be required to provide his own defense. The matter of attention to the interests of the accused may even be carried so far that he is to be provided with certain assistance in securing evidence. (Perhaps an accused person who is found not guilty may be reimbursed to some extent for his time, trouble, or expenses.) Under the system, the interests of the accused are adequately looked after. His case may be given attention from the

The public defender system where tried has for the most part proved successful. Little friction has appeared between this officer and the public prosecuting officer—but rather cordial relations and openness of dealing. Sometimes as a result of consultations and exchange of opinions between the two, a better understanding is gained as to the proper handling of the case. Seldom has a stalemate been the outcome. Apparently also under the public defender system there has been a greater proportion of cases with the plea of guilty, of cases placed upon probation, and of cases settled out of court. In general criminal justice seems to have been, not impeded, but advanced by the arrangement.

With the proper organization of courts there may be less need for a special public defender. In some cases with the enlargement of the powers, and possibly with greater legal training, of the probation officer, the services of the latter may be regarded as a substitute to a greater or less extent. With the larger application, also, of psychiatric treatment at court, and with the proper disposal of a case placed in the hands of a body of experts, there may be less call for a special public defender.

BETTER CONDITIONS AS TO BAIL AND LIKE MATTERS

The system of bail, intended to be of aid to an offender, possibly wrongfully caught within the meshes of the law, has not infrequently been subjected to great abuse, and justice has not infrequently suffered a serious setback in consequence. This to a considerable degree is attributable to the rise of the professional bondsman, who has now appeared practically as an adjunct of a number of courts, particularly in large cities.¹ While many bonding concerns are entirely of legitimate character, and are honorable in their practices, there has grown up about not a few courts a host of hangers-on, having low professional standards, often purely mercenary, often corrupt, often of more or less shady qualities. Court precincts are infested by them or their "runners," for the purpose of securing business. Some are not without political influence. There has in general been quite too little investigation or regulation of the doings of these persons.

A frequent instance of wrongdoing in connection with bail is start. He also has protection from a possibly overzealous prosecuting official anxious to secure a conviction.

¹ In some cities bail is allowed for considerably over one-half of indicted offenders. In some cities at least one-fifth of cases of bail are forfeited.

the putting up of property as security for far more than its real value, or upon more than one bond at the same time. In other words, a bondsman may be accepted in sums which his tangible assets can only in small degree meet. Property may even be offered which is under a legal cloud, or there may take place actual fraud in the conveying of property to another to escape levy upon it. The bail offered may thus often be largely worthless, or "straw bail."

Bail may be furnished to unworthy characters, even including actual criminals—with possibly a new crime committed while on bail for another. Perhaps between them and their bondsmen there may be too intimate a relation, perhaps actual collusion. Bail jumping may be encouraged; in fact, a premium may be put upon it.

Machinery for the immediate collection of forfeited bail may be wanting, or may be of imperfect character. Officers of the law are often lacking in diligence in its collection. If action is taken, it may come quite too late. In such case the state has nothing to show for the defrauding by and the escape of its criminals. Costs of collection of bail may be considerable. The amount may vary greatly; it is often illogical.

On the other hand, excessive fees for bail in proper circumstances are at times charged, a particular hardship for the poor. Sometimes, also, cash fees are collected from relatives of the accused, their distress being the occasion for their exploitation.

The evils connected with professional bondsmen may be greatly reduced. No small improvement is possible alike from the raising of bonding standards in general and from stricter legal regulations for the bonding business, including registration of all engaged therein. Bonding companies should be required to state their activities in definite terms. They might also be required to indicate the collateral involved. State laws as to insurance corporations should be made to apply to bonding agencies, with power of inspection in the hands of State officials. The number of bonds put up by a single bondsman should be limited. Agents of bonding companies should be of responsible character; they should be full-time agents and not engaged in other pursuits. "Runners" should be eliminated. Advertising should be carefully regulated. Charges of bonding services should be fixed. There should be a limit placed upon bail bonds by general security companies. One offering bond in more than one undertaking at one time may possibly be regarded as a professional bondsman.

Courts should make sure of the collateral offered. No property should be permitted to be pledged as bail in more than one case at the same time. Property should be accepted at less than its proven net value. All other property of a bondsman should be subject to a lien in case the original property is short. No change in the status of property for bail should be permitted without the consent of the court. All property pledged should be clear as to title and without cloud. Any falsification as to property ownership or value should be made a special offense. Careful records should be kept of all transactions.

Bail should not be allowed for confirmed criminals—possibly not even for second offenders, especially when crimes of violence are involved—unless by a higher court. It should not be allowed for offenders whose bail has once been forfeited, nor for those already on bail (and perhaps not for those in itinerant occupations). Notice of application for bail should be a prerequisite. Records should be kept of all such previous applications and of their outcome, together with statements as to previous efforts in this direction. Possibly persons found guilty after jury trial should not be allowed bail while their case is on appeal. Courts should be slow in accepting bail forfeiture. Jumping of bail should be made a distinct offense. Forfeiture of bail should take place within a limited time after non-appearance of the accused, perhaps within a couple of months.

At the same time it should be seen that there are ample facilities for bail for those really in need of it, and entitled to it, that bail is within the reach of all worthy cases. In many places the privilege of bail should be available in far greater degree than it now is, and should be far more expeditious. In particular, bail facilities should be at hand for a portion of those held in jail and awaiting trial, a considerable proportion of whom are without funds, and a considerable proportion of whom will eventually be found not guilty.

In respect to many minor offenses there might with no essential damage be substituted for warrant of arrest a simple summons, involving no imprisonment behind bars in lieu of bail, especially when the alleged offenders are known and are not likely to attempt escape. Bail, furthermore, should not as a rule be required more than once in the same case. Quick trial is in general a desirable remedy for the possible evils of bail.

Another matter requiring attention in the consideration of the treatment of the accused prior to formal trial is the writ of habeas corpus and its possible misuse. While this writ is to be

regarded as of indispensable value among a free people, and is to be jealously preserved, there are occasions when it is subject to abuse—a situation to be guarded against no less vigilantly. The review of the action of one judge by another should not be allowed to go too far. Applications for habeas corpus are to be made to a judge in a different jurisdiction only for good reason. In all applications there should perhaps be a statement of all prior applications. Such precautions are desirable even though applications are for the most part denied.

Other matters, as the provisions in statutes of limitation, the issuing of certificates of reasonable doubt, etc., are likewise to be duly safeguarded, to the end that justice may be advanced, and not retarded.

REDUCTION IN ADVANTAGES OF ACCUSED OVER PROSECUTION

In criminal proceedings in the United States in general the defendant, or the accused, gets much the better of it. The law shows a distinct partiality toward him. He is given every advantage over the state, or the prosecution, and receives the benefit of every doubt and technicality. His interests are looked after with scrupulous care.

The protection of the defendant in earlier times was well, when he was subject to the caprice and the power of oppression of those in authority. Safeguarding the interests of the individual, criminal though he was, and the mitigation of ill and barbarous usage of him became the policy of legal procedure. To-day it might well be asked if we have not gone too far in this respect, and whether the protection of the interests of the accused has not taken precedence over the securing of justice or the welfare of the community.

Peculiar advantages, largely of constitutional origin, which the defendant in criminal proceedings can claim and demand are as follows: (1) He can insist upon a speedy and public trial, something the state cannot do. (2) He is at greater liberty than the state in securing change of venue, the state but infrequently being allowed this. (3) His challenges to the jury are of wider range than those of the state. (4) He may have the state's case at the very beginning, or at the preliminary examination—the state may not have his. (5) He is entitled to know the character of the evidence to be adduced against him—the state may not know the character of his defense. (6) He may learn the names of the state's witnesses against him—the state may be in ignor-

ance as to his witnesses. (7) At his trial he must be confronted with the witnesses against him; for his own absent witnesses he may secure depositions—something the state may not do. (8) He need not himself testify—if his evidence might tend to incriminate him—and no deductions are permitted from his silence. (9) He is presumed innocent at every stage of the proceedings. When the question of his possible guilt is submitted to the jury, this body must be satisfied of it beyond a reasonable doubt. (10) He may not be tried again for the same offense; he may not be placed in second jeopardy as to life or limb—this plea sometimes being allowed even though there has not been a full actual trial (perhaps short of the verdict or in the event of some harmless mistake on the part of the prosecution). (11) His grounds for appeal are broad—those of the state are much more restricted. (12) It is a rule of law in general that criminal statutes which are against the accused are to be strictly construed.

Other advantages of the accused over the prosecution, of major or of minor importance, are as follows: The defendant may be afforded the right to have the examining magistrate disqualified—the state seldom having like rights. In some States the defendant may challenge members of the grand jury—the state seldom having such right. The trial judge may be challenged by the defendant on the grounds of prejudice, but seldom by the state. During the trial the defendant has larger rights with respect to challenging. In cross-examination the defendant is more favored. In a defense of insanity the defendant has certain advantages. (In some States insanity may be established merely on the preponderance of evidence.) The exercise of improper influences adverse to the defendant may entitle him after conviction to a new trial—but less frequently is the reverse the case. If a lower court decides against the defendant, its action is subject to review—but not if against the prosecution. The defendant may appeal from practically any erroneous decision; in most States the state cannot appeal as to the admission of evidence, instructions of the court, etc. If on appeal the sentence is found to be too severe, there may perhaps be allowed a new trial; but if the prosecution is affirmed, the penalty may not be increased. If the defendant is unable to pay for an appeal, the state may do so for him; but if the defendant is able to do so and loses, the state may seldom collect costs from him—the defendant thus having right of appeal at public expense, but the state not having corresponding right at the expense of the defendant. The defendant may have for his defense as many

attorneys as he can pay for; the state in general must rely only upon its regular prosecuting officials. As a last resort, the defendant may ask for a pardon.

Further specific guarantees for the protection or assistance of an accused or convicted person, found in the Federal Constitution, and often duplicated, reënforced, or extended in State Constitutions, are in the main as follows: The accused is allowed the benefit of counsel. There may be no excessive bail imposed. There may be no excessive fine. No cruel or unusual punishment may be inflicted. There may be no punishment under *ex post facto* laws. There must be equal protection of the laws. Criminal proceedings must be according to due process of law. In general trial must be at or near the place of the commission of the offense. For the more serious offenses in general grand jury proceedings are necessary. The accused is entitled to trial by a jury of his peers. He need not be a witness against himself. Undue services may not be required of him. The writ of habeas corpus is not to be denied him.

In general, opportunity for review of the case of the accused is afforded, and a *prima facie* case must be made out against him, on two, possibly three, different occasions before the actual trial—at the preliminary examination and at the grand jury inquest, and perhaps in connection with habeas corpus proceedings. At any of these proceedings an agency of the law may see fit to discharge him; if so, his release is complete and final. If at any stage the prosecution wins its point, the case is simply advanced to a higher stage, and the matter undergoes further examination. (At almost all stages the prosecuting officer in particular has considerable power or discretion as to dismissal of proceedings.)

In the event that the trial court rules against the accused, the ruling is subject to review; but not so in general if the ruling is against the state. In consequence of this situation a given court may be inclined to decide in favor of the accused and thus to prevent a review. There is great latitude in ruling against the state, but little authority to push the state's case. (The extent of the protection of the accused varies in different States.)

These various forms of protection of an accused person have on the whole served a good purpose. Some are still necessary and desirable. The odds, however, should not be placed so heavily against the state in its efforts at prosecution.

The state could with little harm be placed on greater equality with the accused as to not a few matters, including challenges to witnesses, knowledge of opponent's case and opposing wit-

nesses, securing of depositions from absent witnesses, announcement of case at opening of trial proceedings, grounds for appeal (except in case of verdict of acquittal), and other matters.¹

REFORM IN GRAND JURY

The grand jury, despite its great service in the progress of Anglo-Saxon justice, especially in introducing into criminal accusation a leavening body of lay sensibilities, is coming to be regarded in considerable part as having outlived its usefulness. Its present-day shortcomings are readily pointed out: It is expensive. It is slow and cumbersome. It calls citizens from their daily vocations. It prolongs the period of criminal prosecution. It is a burden upon the state's witnesses, who have later to appear for the trial as well. (Now and then occasion is afforded for charges to be brought by an overactive or overzealous prosecuting officer, perhaps also as a means of punishing his personal or political enemies.)

To a large extent the grand jury could give way to other means of initiating prosecution. In some measure the preliminary hearing might be made to answer for the purpose, especially as to less serious offenses, the rights of the accused being duly preserved, and all evidence duly considered. This proceeding, however, would have to be of a somewhat formal and solemn character, and would presuppose a relatively high order of public officials.

A general alternative to the grand jury system of very simple character is the process of information on the part of the prosecuting official, a far more expeditious form of procedure, which might be found adequate and satisfactory for many offenses, especially for offenses not the most serious and for offenses as to which the evidence is fairly clear. The chief objection to this method of prosecution is that it places too great power in the hands of the prosecuting official. Such objection could perhaps be met by the holding of the prosecuting official to strict accountability for any misuse of his office. In addition, the rights of the accused in general may be presumed to receive ample protection at the trial. In States where procedure by information is permitted as a substitute for or alternative to grand jury ac-

¹ Elsewhere are considered possible reduction of the power of the prosecuting officer to discharge, possible changes in the system of preliminary examination, of grand jury action, trial jury proceedings, and possible different attitude as to testimony by the accused.

tion, the former has generally taken the field, with but little resort to the latter.

The time may not be ripe for the complete abandonment of the grand jury system in American jurisprudence. For some matters in connection with criminal proceedings there may always be a place for it. But its operations may well be limited at present. It might be reserved for offenses of the nature of murder, corruption in public office, or offenses involving fraudulent practices in intricate financial or commercial transactions, or offenses in general as to which material doubt exists.

With the grand jury giving its sole attention to the more serious or the more important offenses, it would have more time to take care of these properly; and its general functioning would improve in corresponding measure.

There might also be a considerable reduction in the membership of the grand jury, and as well in the exemptions from grand jury service. There would thus be a larger and more ready supply of potential grand jurors.

The indictment rendered by the grand jury should be much less the complicated, abstruse instrument which it often now is. Simplicity and directness should rather be its characteristics. Defects in it of a purely technical character might often be disregarded. The indictment, furthermore, should be amendable at any stage of the proceedings, provided the defendant's interests are not thereby prejudiced. Variation between pleading and proof should be really material if account thereof is to be taken. Means for putting an end to an indictment should be quashing, rather than demurrer.

POSSIBLE ABOLITION OF OFFICE OF CORONER

The usefulness and the necessity of the coroner's office in criminal proceedings are being looked upon with increasing doubt. It is felt to be expensive, cumbersome, and with but imperfect service rendered. The coroner may be without medical knowledge or training. His hastily summoned jury may often be lacking in dignity and responsibility. It may often be in little position to ascertain actual causes of death. It may be little fitted for the treatment of evidence. Such evidence as is presented may be of no great value; if of real value, it may fail to be developed, or may be lost. It is quite possible for a case before the coroner's jury to be muddled. Sometimes its work has to be done over again. It is even possible for serious abuses to creep

into the system, especially in connection with the use of a fee system.

Probably in many, if not in most, cases the coroner's jury could be dispensed with, with but little loss, and possibly with material gain. Some officer from the prosecutor's office, with legal training, and with medically trained subordinates, or a medical examiner reporting to a prosecuting officer, perhaps a local physician in certain cases, could answer all practical demands. The whole matter might be placed with the health department. The essential task is the ascertaining of the cause of death, without attempt to fix responsibility. Already a movement has begun in this direction.

REFORM IN JURY TRIAL

The petit jury or trial jury has rightly been a prized institution in English and American criminal procedure. It has been believed to be one of our fundamental institutions, and the peculiar bulwark of an accused person in the protection of his rights.

The members of the jury, the "peers" of the accused, are drawn from the ranks of the community at large, constituting a cross-section of it. They represent alike its common sense and its moral sentiment. By the introduction of a lay body the machinery of the law is refreshed and strengthened. The institution of the petit jury is a time-honored one, and efforts at its reform must proceed with much circumspection.

Juries in criminal trials have for the most part a befitting sense of their responsibilities, are actuated by worthy motives, and are seeking to promote justice. But they are not without the weaknesses of human beings, and especially of those who must be but occasional visitants at criminal proceedings. Members may sometimes be of but limited education. Few are expert or trained or fully suited for their special and temporary calling. Most have restricted understanding of the value and implications of evidence. Jurors are neither learned in the law nor skilled in the proper appraisal of testimony. They may be deceived by appearances, or taken in by claptrap rhetoric. They may be swayed by sympathies or prejudices. Deliberations are likely to be controlled by dominant minds. Verdicts may be hastened by weariness of jurors or by business demands upon them. The requirement of unanimity in verdict may result in long drawn-out discussions. Possibly no unanimity can be reached, and there results a "hung"

jury, which is really a miscarriage of justice. If unanimity is reached, it may be at the expense of the surrender of the convictions of some. Great trouble and delay can be caused by one stubborn juror. Not infrequently juries slow up, and do not speed up, justice.

To make the situation worse, some of the persons in the community best qualified morally and intellectually for jury service are legally disqualified. Persons in certain callings are expressly debarred. Persons who have discussed a given case or have expressed an opinion upon it may for that reason be ineligible. To large groups in the population jury service with its possible notoriety, confinement, and interference with one's business, is distasteful and onerous; and it is avoided where possible. With some the small fees afforded are but little compensation for the exactions involved. There are others, less worthy and less fitted for service, whom these fees attract. In many areas less than half of prospective jurors called actually serve. In the long run, it may turn out that one is not tried by his "peers" at all.

The jury system is in need of important readjustments. The classes exempt from jury service might well be reduced. Much greater care should be exercised in accepting excuses from those summoned for service. Prospective jurors should be impressed with a deeper realization of their civic responsibility. At the same time special efforts should be made to accommodate jurors as to time. It might be ascertained at what periods different persons can best serve, and schedules made accordingly. With the general expedition of criminal proceedings, and the consequent shortening of the period of jury service, there would be far less reluctance to service as jurors.

A considerable diminution, furthermore, may be effected in the matter of challenges to prospective jurors, both peremptory challenges and challenges for cause. The same number should be allowed for the prosecution as for the defense. In general half a dozen peremptory challenges, with perhaps a few more in capital cases, should be sufficient. If the judge, rather than the attorneys, were allowed to examine and challenge prospective jurors, there might be universal gain. Ample record should always be available of possible jurors and their qualifications. Jury lists or panels should be kept complete, correct, and up-to-date; there should be no delay or waiting on this account, and there should be no ground for charges of favoritism or discrimination.

There might well be a smaller number of members of a jury. There seems to be no particular or iron-clad reason for the fixing

upon twelve. A verdict less than unanimous might also be accepted in many cases, especially non-capital cases. To a considerable extent juries for civil cases should be dispensed with, thus making available a larger number of persons for service in criminal cases. Reduction in grand jury service would have like effect. The employment of an extra juror might prove of advantage in an emergency.

The number of jury trials, slow and tedious as they are, can be greatly reduced. They should be reserved only for serious offenses or exceptional cases. For many crimes the accused might be permitted to waive a jury trial and to elect a trial by the judge instead—the accused generally having the right to demand a jury trial if he so desires, and constitutional requirements being thus met. A judge may often serve to better advantage than a jury. He can better dispose of technicalities; he is less likely to be swayed by prejudice, and is in better position to weigh evidence. Where necessary, several judges can sit upon a given case. A non-jury trial, moreover, can proceed far more expeditiously than a jury trial. Where employed in the United States, convictions are no less frequent than with the old jury system. Trials generally consume less than two or three weeks for their disposal, often much less. Of accused persons having option in the matter, from seven-tenths to nine-tenths choose non-jury trial.

Whatever may be the factors or considerations involved in the situation, the jury system in the United States is on the whole apparently falling more and more into disuse.

POSSIBLE IMPROVEMENT IN GIVING OF TESTIMONY

A foremost glaring evil appearing in criminal proceedings in connection with the offering of evidence at the present time is the giving of false testimony, or perjury, which is believed to be increasing. The whole question of the effect upon a witness of an oath may have to be gone into. How far the oath actually affects persons who are naturally truthful or naturally untruthful, or how far the oath expedites or insures getting at the facts of a given case, is not fully known. If the oath is to remain as an essential part of the giving of testimony, there is overwhelming need of a far higher regard for its nature and obligations. Adequate punishment should be meted out to those guilty of perjury—something it now but seldom receives. Perjury should include testimony given in one legal proceeding which is at variance with that given in another.

Another matter to require attention is the rule of law that the failure of the accused person to testify is not to be taken as any evidence against him, a matter with respect to which there is increasing complaint.¹ Inferences and deductions from the silence of the witness may not be permissible in the court room; but in the ordinary affairs of life the matter cannot help being viewed differently. If the accused is innocent, how can his testimony hurt him? Why should not comment be made upon his refusal to take the witness stand? In several States the prosecuting officer is now given the right to comment upon the situation.

Attention is also to be directed to the general matter of "immunity baths." By means of these one giving certain testimony is protected from later prosecution with respect to any matter upon which he has testified. Such procedure is sometimes carried too far, and to the impairment of justice.

The use of depositions in the giving of testimony, whether in the interests of the defendant or in the interests of the prosecution, should be greatly extended, with corresponding facilitating of trial proceedings. Further progress is possible from the reciprocating action of the several States in permission for the securing of evidence in one State for use in another.

GREATER ATTENTION TO SUBJECTIVE ASPECTS IN GIVING OF TESTIMONY

The nature of the present giving of testimony is open to serious criticism. It is often with little scientific basis, or with little reference to scientific standards. Comparatively few witnesses are to be called trained, or even good, observers. Mistakes, innocent or honest enough in themselves, are always possible. Sense organs may not function completely. The mind is subject to confusion or to forgetfulness; it is unduly susceptible to suggestion. One's physical or mental condition or situation at a given moment may have no small bearing upon later testimony. Wrong constructions may be placed upon occurrences. Imagination and tendencies to exaggeration may color or distort testimony. Powers of reasoning or ability to draw logical conclusions or to weigh or evaluate evidence may be largely wanting. Prejudice and bias, even if one is unconscious of them, are ever present in the human make-up. All such imperfections in the

¹In older times the defendant was not called upon to testify for fear of possible torture, and as result of the rule in civil practice to insure disinterested testimony.

offering of testimony will have to be given attention, and will have to be assessed, in the light of psychological discoveries. Rules of more scientific character, and based to a greater degree upon psychological advances, will have to be introduced into the system of evidence, and have a greater part in governing it.

INSANITY DEFENSE

The present situation as to the criminal defense in insanity is by common understanding very unsatisfactory. When the plea of insanity is offered, this should preferably be done at arraignment. The accused or the defendant should then be placed under observation, and report made to the court. If deemed best, the formal trial may be proceeded with, the only matter to be decided being whether the act in question was that of the accused. Upon this alone should the jury, if one is employed, be allowed to pass. All questions as to insanity or similar mental derangement, past or present, should be left in the hands of properly qualified alienists. By them is to be determined whether the accused was suffering from mental disease or mental sickness at the time of the offense charged against him, and for that reason was not in the possession of a state of mind which must accompany his act to make it a crime; or whether he is now under mental incapacity. Findings may thus relate both to present condition and to past condition. If the accused was insane at the time of his act, he is to be discharged from criminal prosecution, and given appropriate mental treatment. If now insane, he is to be directly committed to a hospital for the insane. Possibly the accused should in the first instance be sent to a hospital for observation and to have his condition determined.

Available for the court, or at its service, there should be a special body or staff of experts, preferably under the direction of, or at least in touch with, the State department of mental hygiene, to make whatever investigations may be necessary, with opportunity to examine the accused and to make report of its findings. This may perhaps be with the approval or concurrence of the two contending parties. Either of these parties may at the same time be free to retain its own experts if desired. Sometimes the matter may be left to the decision of experts from both sides, together with a third member chosen by themselves. A special official agency, however, is more likely to be fair and impartial and unbiased in its actions and conclusions, and the more likely to secure dispatch in the proceedings; findings

vouched for by it are little likely to be challenged by either of the contending parties.

Tests of mental capacity or incapacity in connection with crime will not always be easy or plain. The test as to the distinction between "right" and "wrong" is not always a satisfactory one. Some not regarded as insane might fail here, or might have different views upon the subject; while some who are recognized as definitely insane might have generally acceptable ideas and conceptions. Possible tests are that at the time of the act in question the accused was not able to appreciate rationally the nature or consequences of his act; or that if he did, he did not have sufficient will power to control his movements. A broader test may contain inquiries as to whether at the time of the act in question the accused was defective in intellect or intelligence; or whether the act was a product of such condition; or whether the accused knew that his act was of a criminal character; or whether he had ceased to have power of volition or control; or whether his state was only partially accountable. A very simple test as to the relation of the mental state to the act involved is whether the accused was able to realize that for the commission of such act he was subject to punishment—though possibly other considerations will have to be given attention.¹

PUBLIC MENTAL CLINICS

Attached to, or at least available for, every court hearing criminal cases there should be some form of psychiatric clinic, as a regular part of its equipment, and with proper standing. Through this means there could be obtained, not only a body of highly valuable clinical material as to criminal behavior—of which at present we possess altogether too little—but most important information to help in determining the proper disposal and treatment to be afforded in the case of a particular offender, especially as relates to confinement in prison. This would include data as to general intelligence; social experiences; fitness for schooling; vocational qualifications, attitudes, and inclinations; lines of desirable or possible employment—together with the nature and the extent of possible sentence, and suitability for possible discharge or parole or probation. With this work the State department of mental hygiene or similar public agency should have greater or less connection; possibly the work should be under its general direction or supervision. There might also

¹ Great expense may be saved through public mental examination.

be greater or less coöperation with local agencies or specialists. Through these clinics perhaps should be conducted all the expert testimony given by physicians and other persons who have been called in for the purpose, including testimony with regard to extreme mental disturbance or insanity.

Very slowly are such public mental clinics being introduced into American courts. So far they have been employed for the most part in connection with the matter of probation. Their most important activities have been with the juvenile courts, where their value has been more or less clearly proved. As yet they have been but little established in connection with courts for adults, though in increasing measure psychiatrists and persons of like vocation are being called upon for advice.¹

REORGANIZATION OF COURTS

In the organization of courts and its possible reform initial attention is to be given to the so-called inferior courts—their functioning and operations, and even their necessity, in criminal procedure. These courts loom large in the matter of criminal justice. Their sway is wide, and their power large. It is they which are in closest touch with the masses of the population, and especially those of it who are with little education or with little means, or with few friends, or with little contentment in life or heart's ease. Such courts are the general receptacle for all offenders caught within the meshes of the law, where all may expect at least a first hearing. They are without authority to try the more serious cases, but are in position to dismiss them. They have much prerogative as to some offenses, and little as to others, possibly without regard to the actual relative gravity or involvements of either kind.

The evidence introduced or made available in these courts

¹Such persons come most often from educational institutions or from institutions for the insane, besides persons engaged in private practice. In an inquiry of certain courts in 1928, 9.4 per cent were found to have full-time or part-time psychiatrists, and 6.8 per cent full-time or part-time psychologists; with 41.6 per cent resort is had to private physicians; to 20.6 per cent there are regular social workers attached. In Massachusetts psychiatric examination is required of all persons in jail for more than thirty days or who are convicted of a second offense, this examination being conducted by the State department of mental diseases, with report to the court; power is vested in the court to commit one to a proper institution. Persons charged with a serious offense may be referred to such department for examination. See *Proceedings of National Conference of Social Work*, 1928, p. 143; *Mental Hygiene*, Oct., 1928.

may not properly be attended to or taken care of. There may be little real analysis of it, or little preparation of it for later use. The case of the state may be poorly made out or poorly presented. The prosecuting officer has too limited a connection with criminal proceedings at this stage. Oftentimes there is allowed too much discretion to these courts, especially in the dismissal of cases, or in the reduction of charges from a more serious to a less serious nature, or of accepting a plea of guilty for a lesser offense. It is to be remembered that the net outcome of this latter procedure may be the punishment for a crime not committed or lack of punishment for one really committed. Not infrequently a seasoned or hardened offender is enabled to get off lightly.

The judges of inferior courts are relatively little skilled or experienced in legal matters—though from their situation there should be demanded the highest possible in this respect. They sometimes give but part-time service, their duties often necessitating but a few hours on certain days; and other occupations may be engaged in as well. The salary afforded may not be such as to attract the ablest or the best fitted. Places are not infrequently rewards for political activity. There may be an unequal distribution of work among different judges. There may be little uniformity of action among them. Procedure may lack the standing and the dignity which are befitting the work of courts. Legal standards or ethics may not be of a high order. The scene lends itself to the operations of a low type of lawyer or of bondsman. Sometimes hearings are conducted in greater or less disorder and confusion.

If the inferior courts are to be permitted to remain, they should be of much worthier order, and be vested with a much greater prestige. Higher qualifications, including better training in general, should be required of the judges. Politics should have no part in their selection or in the performance of their tasks. Proceedings, though simple, should be in keeping with proper legal principles, standards, and ethics.

There should be better handling of the evidence secured, and closer coöperation with the office of the public prosecutor. Adequate reporting of the disposal of cases, particularly in the reduction of charges, might be made to a higher court. Possibly there should be greater supervision in general by higher courts of the work of lower.

Indeed, the question may be seriously asked whether the time has not arrived for the elimination, especially in the more popu-

lous centers, of what are known as the inferior courts—whether there is still need for them, or whether criminal justice would not be advanced without them. In the present day, with the development of means of rapid transportation, with the closer integration of communities, and with general tendencies toward concentration of administrative functions, there would seem to be decreasing call for these courts. In any event different lower courts in the same city could well be combined or brought to a common center.

Both in principle and in practice, there are serious disadvantages with the system of multiple courts. They add to the complexity of the machinery of criminal prosecution. They increase considerably the expense of this prosecution. They draw it out and prolong it. They consume public energies. They take the time of witnesses, and make their evidence less fresh for later proceedings. The very fact, furthermore, that there exist higher courts to which at least some cases may be carried, serves to weaken the respect for lower courts.¹

Lower courts might to a large extent well be merged into or amalgamated with higher courts, with the consequent establishment of a consolidated or unified court. Criminal cases in general could then be heard in the single court. Not only would the weaknesses and shortcomings of the inferior courts thus be largely obviated, but there would be positive gains.

A court of this character could be in practically continuous session, supplied with proper and adequate clerical assistance. It could be in position to take care of all the matters concerned with judicial proceedings, beginning with the preliminary hearing. A clerical staff could be empowered to attend to details, and perhaps to pass upon cases of relatively minor character and with little dispute as to the facts involved, questions of bail being left with a competent judge. Possibly even the court should have such organization that it could take on the functions of a grand jury, at least in some part. There might also be provided full opportunity for the accused to make statements and answer questions of his own volition, with the consequent elimination in some measure of possible evils of the "third degree." (Proceedings, however, should not become of too inquisitorial a character.)

With such synthesis of judicial procedure benefits will be of several kinds: higher standards among court officials and at-

¹The plan of preliminary examination was of relatively late introduction. It was adopted to avoid the necessity of holding one till the grand jury could act.

tendants; greater order and accountability; greater expedition in court dealings; swifter and more certain punishment in case of its infliction; reduced possibility of abuse in the matter of bonding; far better provision for and a far better grade of probation when this method of treatment is availed of; provision for fuller and more competent psychiatric work as an adjunct of the court. A not negligible consideration will be better and more complete keeping of records in criminal cases, and from beginning to end.

Where the new plan has been tried in the United States, the results have for the most part been quite favorable, especially in the large reduction of the time necessary for the disposal of cases.¹

But whatever is to be the fate of the inferior courts, and to whatever extent is to be brought about combination of higher with lower courts, there are improvements that can be made to apply to courts in general. Operations of these bodies should be of more businesslike and systematized character. Their proceedings should be according to more standardized forms, and on a more uniform basis—of the same general tenor, modified to meet the exigencies of different situations. Between judges of equal ranking in the same court, or between courts of like jurisdiction, there is often too little uniformity of procedure—in fact often wide differences in social attitudes, as well as in the disposal of cases, especially as to the severity of sentences to be imposed. When there is greater similarity of action, justice will move forward in corresponding degree.

Between courts of different grades or between higher and lower courts there should be a larger measure of coördination and concert. In particular, there should be some concentration of responsibility for the actions of the several higher and lower courts in a given jurisdiction. By the court of uppermost grade there might be broad rules formulated or laid down, to apply both to it and to courts of inferior standing. Higher courts might to a greater or less extent also have supervisory powers over lower. There might possibly even be a sort of judicial head, with a considerable amount of administrative power, including certain power in the appointment of subordinate judges, and an-

¹ In Detroit, where formerly only a small percentage of cases were disposed of within one or two weeks after arrest, from one-half to two-thirds are now so disposed of. Some nine-tenths are disposed of within a month. See in particular *Journal of American Institute of Criminal Law and Criminology*, May, 1923.

swerable for the conduct of criminal proceedings in general.¹ The business before different courts might, in addition, undergo careful classification, with portions assigned to special judges or for special calendars. Where justified by conditions, especially in the more populous areas, courts might be divided into sections, a judge or a group of judges specializing in some branch of the law; where necessary a given case could be reviewed by the whole court. In the work of courts in general there should be drawn a less sharp line between county and city cases. There might well be a combination of courts in any possible consolidation of administrative functions between the two political units.

But whatever the character of the courts established for the administration of criminal justice, there should be a sufficient number of judges to attend to all criminal business—to keep the calendar clear and the docket from being overcrowded. Vacations of judges should be of reasonable length, with proper provision for substitutes—there should be no closed season for the courts. Judges, furthermore, should be relieved as far as possible of clerical tasks, to the end that they may be enabled to give their full time and strength to their judicial duties. They should have relatively long tenure of office, continuity of office being of particular advantage to the administration of justice. Judges should as a general principle be selected for or appointed to office.

ENLARGED POWERS OF COURT AT TRIAL PROCEEDINGS

The court should be permitted to take quite active part in the proceedings before it—as was generally the case at common law.² Its powers should not be limited to those of a moderator in an assembly. It should do something more than rule upon the niceties of the evidence about to be submitted by witnesses, and give formal instructions to the jury as to their duties. It should aim to see, not merely that the rules are followed, but that substantial justice is done. It should have power to see that proceedings are conducted with both decorum and expedi-

¹ In an increasing number of States judicial councils are being created, composed of judges from different orders of courts, to supervise courts, to secure appropriate legislation, and to make a continuing study of rules of procedure, methods of courts, etc.

² Shortly after the founding of the United States as a nation, judges were shorn of much of their power, for fear that they might use it to an excessive extent.

tion. The attainment of justice by the shortest route should be the one object of the court.

The presentation of evidence is to be facilitated. The court should require that the testimony of witnesses be given clearly and to the point. It should be able to ask appropriate questions of them directly. It should be able to advise the jury as to facts in a given case, and as to the character and credibility of witnesses. It should be able to pass upon the weight of evidence for the enlightenment of the jury. It should if necessary analyze and outline the evidence offered, and perhaps present a summary of it. Instructions to the jury should be as brief and as plain as possible, with the least technicality, and not involved or difficult to grasp. In only a few States (besides the Federal courts) is the court at present allowed to comment upon or to instruct the jury as to facts.

The court should be in a position to call a halt to unduly long speeches or uncalled-for remarks on the part of counsel. Wordy and inconsequential disputes are of too frequent occurrence, and much irrelevant and needless matter is dragged in. Repetition and diffusion have had too large a place in court action. Objections to certain proceedings are often of a technical or even trifling nature, perhaps little more than the elaboration of legal subtleties.

Witnesses are to receive due consideration when they appear. They are to be protected from abuse or wanton, browbeating, bulldozing tactics, or against unnecessary pettifogging and confusion, and also against any possible intimidation or threats.

In the interests of justice and of general fairness, the defense might be required to state its case at the beginning of the trial, or before the presentation of evidence, just as the prosecution is required to do. The opening address for the defendant might be given immediately following that of the prosecution.

Finally, there could well be extended to the procedure of the trial court, without loss to its traditional dignity and impressiveness, a larger measure of the general simplicity and directness, together with the application of the scientific principles, that may characterize the work of the juvenile courts. With this is to be included the wider use of preliminary investigation and the social history of the offender, or social case work, as very valuable means in arriving at a determination of the most suitable disposal to be made of a case, or of the most desirable treatment to be afforded it.

LESS PROTRACTED CRIMINAL PROCEEDINGS

General criminal proceedings are often attended by delay. They are often long drawn-out, sometimes notoriously so. Weeks, months, even years may pass before a case is brought to an end, or ultimately disposed of. There are wide variations in the time which may elapse between the arrest of an offender and the final disposition of his case. This may range from a few weeks to half a year, or even a year. If an appeal is involved, the whole proceeding may consume as much time as two years or more.

The costs of the law's delays may be considerable—slackening of demand for prompt justice, possible death or disappearance of witnesses, inconvenience to and exhaustion of patience of witnesses, loss of evidence, dampening of ardor of the citizen for service, whether as juror, witness, or complainant, possible opportunity to the criminal to commit crime anew, etc.—to say nothing of the general financial costs to the state involved, and of the blunting of the whole criminal process.

Causes of the law's delays are not a few—overcrowding of docket, with the holding back of cases long after their due time; postponement or "continuance" of case for reasons more or less insufficient; excessive number of jury trials, both criminal and civil, with attendant difficulties in getting a sufficient number of properly qualified jurors; protracted passing upon prospective jurors; long drawn-out giving of testimony, often with injection of immaterial and unnecessary matter; various needless motions by counsel; tardiness of jury in reaching verdict; lack of power or unwillingness of judge to expedite proceedings; allowing of too many grounds for appeal; consumption of time in getting appeal before appellate court; slowness of action of appellate court; etc. Further causes of delay in some circumstances may be securing of commissions to take evidence, supplementary motions of one kind or another, appeals to Federal courts on some ground, corrections in previously offered testimony, habeas corpus proceedings, securing of certificate of reasonable doubt, etc.

There are a number of grounds for having a trial or other proceedings continued, some meritorious and some not. Included are absence or illness of witness, illness or other disqualification of attorney, existing public excitement or disturbance, lack of time for preparation of case, etc. Too often postponement is secured through the complaisance of a judge, or at the impor-

tunity of lawyers who are busy with something else at the time, or who simply wish to cause delay, perhaps with the intention of thus wearing out the opposing side.

Much can be done to eliminate delays in criminal prosecution—by statutory changes in codes of procedure, by changes in rules of court action, and by vigor and determination on the part of presiding judges. Useless questions or discussions or motions may be shut off. Address of counsel may be kept within bounds. Requests for continuance or postponement may be heard with great care, and granted only when there is sufficient reason. The time for filing briefs should be restricted. Motions with respect to further action on a given case should be decided with promptness, perhaps within a specified time, perhaps within a month or two at the most. The time for proceedings in error could often well be reduced. When appeals are taken, they should be within a definite period—perhaps within a few weeks—or, except in extraordinary circumstances, lost for good. The execution of various writs could be expedited, or could be attended to with greater dispatch.

REFORM IN APPEAL PROCEDURE

The privilege of appeal to a higher court upon the adverse issue of a contest at law has been a right guaranteed and prized. And justly so. But the right to appeal has too often been subjected to abuse. Appeals, while to some extent necessary and desirable, and while more often unavailing than availing, many times have the effect of impeding or thwarting or defeating justice.

Complaint is made with regard to the matter of appeal from the findings or decision of a lower to a higher or appellate court largely upon three grounds: the needlessness of appeal, with sometimes miscarriage of justice; the unfair advantage or discrimination in favor of the accused or the defendant, as against the prosecution or the state, in the taking of appeal; and the general tardiness or delay of justice involved in the appeal.

The matter of appeal has often been overdone; it has sometimes been carried quite too far—beyond reason or beyond the demands of justice. There are occasions when appeals are of merely perfunctory nature, perhaps taken as a matter of course, perhaps simply on technical grounds, without reference to the actual requirements of a case, perhaps chiefly to cause the im-

pression that no means is being neglected in behalf of the defendant.

The defendant has in general a considerably larger number of grounds of appeal than has the state. It is his interests that are looked after with the greater concern—those of the state perhaps being of secondary or subsidiary concern. The strictest rule of law in the matter of appeal is that any error, however slight, must lead to reversal, unless it is affirmatively shown that the defendant was not prejudiced or injured thereby. It does not go nearly so far for the state. A quite heavy burden is thus placed upon the prosecution, and too great an advantage is allowed the defendant.

Appeals are often cumbersome, costly, and highly dilatory. In the process of carrying them through there may be involved no small expenditure of time, energy, and money; the sureness and quickness of punishment, which are of such importance in the matter of criminal justice, are in considerable degree lost. Appeals leave issues in suspense and uncertainty, and weaken the whole structure of criminal justice. In a sense, appeals constitute a reflection upon the procedure of the trial court. When a given case is reversed or remanded by an appellate court, it may mean that the latter court is actuated to too great an extent by technical considerations, or that the former court is not doing its work properly.

The whole matter of appeal needs careful regulation and limitation. An appeal by the defendant in a criminal case should in general be permitted only when assurances are given that the result of a verdict is against the law, or is against the interests of justice. Verdicts should not be set aside on mere subtleties, or for mere technicalities, or if there has been no real miscarriage of justice. If on appeal too severe or too mild a penalty should be found to have been imposed, it ought to be duly adjusted without calling for a new trial. If on appeal, also, the appellate court is unable to find for a full verdict, it should allow as much of it as possible to stand. On appeal, furthermore, the appellate court should be able to pass upon both positive and negative rulings in the lower court, in order to effect substantial justice. In short, the appellate court should practically have power to remedy whatever matters are in need of remedy. The state should have the right of appeal nearly equally with the defendant—except perhaps when a verdict of acquittal is rendered—and (as is sometimes already the case) in particular upon such matters as judgment for defendant upon

dismissal of indictment or upon order in arrest of judgment in trial proceedings.

Occasionally, on the other hand, encouragement is to be given to appeals, when they may promote justice or prevent injustice. It is not to be forgotten that at times an appellate court may be in position to render substantial justice when all else has failed.

In general the appellate court should be, not an instrument given over to dealing with the niceties and technicalities and unimportant details of criminal procedure, nor an instrument for impeding or rendering the more difficult the movements of criminal prosecution, but an agency existing to interpret uncertain points of the law which are of moment, and to expedite and promote criminal justice.

OBLIGATIONS OF ADMINISTRATORS OF CRIMINAL JUSTICE

In the full consideration of the matter of criminal procedure there must not be neglected or passed over the human elements involved. Whatever the changes to be desired or to be brought about in the machinery of criminal prosecution or in the methods by which criminal justice is to be attained, there is nothing that can take the place of the personal factors charged with the administration of the criminal law. Sometimes its failures are to be laid, not to any inherent weakness or defect in it, but to the character and conduct of those into whose hands is entrusted its keeping.

From all having to do with the operations of the criminal law—from those whose business as lawyers takes them to it, and *a fortiori* from those who are to assume the rôle of judges therein—there are to be exacted standards of the highest, personal and professional. The criminal law should be a jealous mistress as to all who wish to enter it. In the training received before this most vital work is embarked upon there should be a place, not only for what comes within the sphere of legal studies, but also for what has recognition in the domain of ethics and of the social sciences. To all having part in the actions of society with respect to the offender against its laws there should be imparted the solemn consciousness that they are public servants of exceptional character—that there is no higher duty to be performed within all its wide bounds than theirs. Those who essay to practice criminal law or who offer themselves in that capacity should be imbued with the knowledge that they

are the trained servants of organized government, with whom principles alike of honor and of devotion to the public service hold precedence above all else. A primary consideration with them will be that nothing that they do will interfere with or check the carrying out of justice in all circumstances and with respect to all men. They will so act that none will ever claim or win exemption from any law of the land because of wealth or any other material thing, and none will be denied justice because of lack of wealth or any other material thing. With judges there will be recognition of the extraordinary gravity and responsibility of their office in human affairs, and in the construction and maintenance of a well-ordered society. They will never allow themselves to forget the high faith that freedom-loving and justice-loving people have been wont to repose in what is connoted by the "judicial ermine."

OBLIGATIONS OF GENERAL PUBLIC

Obligations as to the proper functioning of the criminal law reach further yet. Beneath its successful administration remains another force—of widest compass, and of utmost consequence. This is the general public, or more specifically, the body of citizenry of the country. According as are its intelligence and concern in the matter, so will be the footing and the efficacy of criminal procedure. There are several particular ways by which is possible a genuine and definite part. The first of all is allegiance to the principle and to the practice of law observance. This will apply to all law, including any that should happen to be personally unpopular or obnoxious. When a law is disregarded, or worse still, flouted, by a citizen or by a group of citizens, no matter for what reason, there cannot be expected the fine respect or reverence for law in general which are so necessary and on which so much depends for its ascendancy in the community. Contempt for or infraction of some portion or item of the law disturbs and rocks the whole structure of law enforcement.

Much can be done by the citizen in the upholding of the criminal law, not by example and influence alone, but by his continuing moral and material support. His interest and concern can always find spheres for their manifestation. The immediate task of the citizen from his place as an elector in the community is to see that the character and standing of those charged with the responsibility of criminal administration are of a high order, and that they possess the essential fitness for their great business.

The qualifications of those who are to have part alike in the making of criminal laws and in their enforcement are such as to require the best that the community has to give. Only by enlightened and vigorous action can there be assurance that the right officials are selected.

For the actual conduct of criminal justice never-ending vigilance is to be exercised by the citizen. Choosing of law makers and of law dispensers is not enough. It is often necessary that officials be held to the proper discharge of their duties. Special care must be taken that in criminal administration political favoritism or influence gets no foothold whatever, or has at no time part or lot in it. Its place is too high and its action of too great moment to permit any considerations but those of strict, unyielding, undeviating justice.

In connection with the matter of the fitness of those who are to administer the criminal law, attention may also be directed to the matter of suitable training for them—both by the setting up of proper facilities for the purpose, and by the establishing of proper requirements.

However much the general public may be able to assist in raising the tone and in elevating the standards of those who are to concern themselves in the administration of criminal justice, a far greater duty falls upon that section of it known as the legal profession, from whose ranks are recruited in such large measure those who are to act in that capacity. As its power and influence are great in the matter, so may much be demanded of it.

It is given to the citizen also to have direct participation in criminal procedure. This may be done through several channels. As a complainant against wrongdoing or criminal deeds the citizen is in position to set in motion the machinery of the criminal law. Upon the knowledge or reasonable belief of the commission of an offense due report may be made to the proper authorities, which is of all the more value if made with alacrity and with sureness of ground. In the detection and apprehension of criminals and in the general attack upon crime, there may at times be ample opportunity for assistance to the officers of the law.

As a witness in criminal proceedings, the citizen constitutes a vital link in the entire business of the prosecution of the offender. His readiness and willingness to bear evidence and to give true and full testimony count heavily in the functioning of the law as to particular offenders, and as to its criminal

policies in general. Upon what the citizen as a witness does or declines to do may largely depend the victory or defeat of criminal justice.

As a juror, the citizen enters the sacred precincts of the dispensing of justice. Whether a member of the body that indicts or of the body that tries a case, he is lifted up to heights where he can sit in judgment upon his fellow men, can give out to offenders what is meet in the law, and can see that justice is denied to none. As one in such an exalted position, he must be deeply moved at the consciousness of his responsibilities, and at the same time not daring to shirk them.

In touch with the general handling of criminal affairs in exceptional degree is one section of the public—the press. It stands in definite relation to the matter of crime and of criminal justice, and has to assume a clear responsibility for its treatment of it. In itself a powerful machine of publicity and for shaping public attitudes, it can render peculiar service or disservice by its conduct. It may or may not present its news matter and its discussions in such a manner that there is conveyed only what the public has a right to have conveyed—without occasioning offense, without improperly coloring or elaborating details, without painting extravagant or fevered or lurid pictures, without consciously appealing to or feeding flaccid, morbid, debased, or vicious instincts or proclivities, without playing upon or exploiting the seamy side of criminal life, without tending to incite susceptible characters to the behavior of criminals, without making a hero of the criminal or crying up his adventures or feats, without overdoing or drawing out of perspective the whole situation or using it for purely commercial ends, without attempting wrongly to influence a case irrespective of proper jury action, without interfering with regular criminal administration, without embarrassing the public officials charged with prosecution, without lowering the standing or dignity of the court or its auxiliaries. It is to be remembered that the press may have great effect upon possible leanings toward criminal activities through its means of expounding a given matter or of putting it within the glare of pitiless publicity. By many nothing is so much dreaded as being found out through the newspaper or having their evil deeds come to light through it.

The whole issue depends mainly upon the character and standing of individual newspapers. Some have a worthy conception of their functions and responsibilities in the matter of crime and

criminal justice, and conduct themselves with honor and to the credit of their calling. Of others not so much can be said.

What is true of newspapers in treating of the subject of criminal procedure is true, in however less or different a degree, of all other forces in society which are in position to afford publicity or to mold public opinion.

In addition, in all forms of popular entertainment or amusement there are to be avoided presentations of false or distorted conceptions of life, or presentations that make it more difficult to do what is right and less difficult to do what is not right, or presentations that make wrongdoing attractive and inviting and the way of the transgressor not hard.

CHAPTER LVII

POSSIBLE CONTROL OF FUNDAMENTAL FACTORS IN CAUSATION OF CRIME

PLACE OF CRIME IN SOCIETY

After all that can be done by way of remedy or reform or reconstruction of the criminal law has been done to secure a successful issue for it in its combat with crime, it is perceived that all that may transpire here is merely upon the surface, and does not enter the deep levels of the conflict or the inner spaces where the actual struggle is engaged. That lies within the soul of man, and within the wide theater of his earthly way-faring. It is here that we must look if we are to meet and comprehend the ultimate factors in the existence of crime in human society. It is here that we must bring our weapons and our munitions if we expect indeed to make incursions into the arena of the fight.

Crime represents the arch curse among men. It is society's everlasting enemy, forever fighting from within. Society, bruised and dazed under its onsets, cannot comprehend the continuing presence of so mighty and determined a foe. The struggle to make an end of crime or to get control of it is in not a few respects the primary struggle within human society, one that has existed from the beginning. There is nothing that strikes so boldly or defiantly, or with such subversive or destructive might, at the very heart of the attempt of men to achieve and perpetuate organized society among them. It is the forcible denial of the possibility or of the success of such an undertaking. It uproots man's accomplishments, and leaves him with the brutes.

There is nothing new that can be said as to the possible measures for the prevention or ending of crime. The vocabulary of our language has been exhausted upon the subject. In varying degree and in varying order have been made counsels and proposals, most with some strength, and some with much strength. Involved in the whole problem are a multiplicity of forces which make it of high complexity and uncertainty. From the nature

of the case—so far as man and society seem now constituted—there is no ready-to-hand remedy or solution that can be summoned. The springs of crime issue deep in what makes up human society, and in all that is involved in human nature.

UNDERLYING FACTORS IN CAUSATION OF CRIME

Of such extent and of such variety are the factors entering into the matter of crime that all attempted explanations of it can be regarded as but partial. Seldom can all these factors be known or measured; some can be but dimly perceived; the relations of certain ones to others can often be only imperfectly recognized. What things make their way into crime or are components of it generally overlap or are bound up together in such fashion and in such order as to render all but impossible the discovery and the apportionment of individual or separate elements.

Crime is but one phase of wrongdoing. It constitutes only a part of the evil residing or arising in man. In a sense it is simply the outward manifestation of this evil. It is but one of the harmful and deleterious forces that grow up from the seeds and roots lying within the heart of man—though often perhaps of greatest social consequence and moment. What reposes in the depths of the human soul that cannot meet commendation or pass the tests of approved conduct does not always come to the surface, possibly showing itself but occasionally. Those breaches of the moral law, or those denials of the behests of conscience, or those stiflings of its whisperings, or those evil imaginings or plottings, which stand forth within the inner life, and which may be outside the notice and attention of society, and are beyond its formal charges, are perhaps, by any just standards, inherently as wrongful as some of the matters denominated crimes. It is only when something occurs of the nature of an outburst, creating a disturbance to the general peace or jeopardizing the well-being and safety of other persons, that we see fit to employ the term crime—and not always even here.

The fountain heads of crime do not lie far removed from those that are responsible for the general comportment of human creatures; the ugly weeds of crime do not have their birth in a distinct soil of their own. When certain conditions come into being or when certain circumstances happen to exist—and when character is not built up strongly enough to resist, or the surrounding environment or a particular occasion is too powerful to be re-

sisted, or the intellectual faculties at the rudder of man's action are not in perfect control—then any possible lurking propensities towards criminal activities assert themselves. In other words, in human beings generally there is what we may call a breaking point. When it is reached, there suddenly emerges a crime. When it is not reached, we may never know how close our neighbors and those round about us may have come to that stage. This bundle of a greater or less number of good qualities along with or intermixed with a greater or less number of weak or vicious qualities which we call humanity, though always affected in some degree by the force known as character, is very much at the mercy of the intellect which is presumed to serve as guide in the affairs of life, and of the material forces of the world which are in daily and hourly attendance upon man.

In generalized form, then, crime may be said to show itself when there are conditions in the environment inviting or stimulating whatever evil forces exist within to break through any inhibiting powers—such powers consisting, on the one hand, of what may be called strength of intellect, and, on the other hand, of what may be called strength of character. When the surrounding influences persist or increase in vigor, or when the inner resisting or restraining powers become weak and of dwindling avail, then it may be possible for criminal tendencies to become manifest—perhaps to secure a foothold in the individual. It is in the earlier years of life, when outside influences are of magnified might, and when inner forces are at their lowest strength, that the ascendancy of possible criminal propensities is easier and simpler. Most crime is of slow growth from small beginnings. In a sense, the criminal of to-morrow is little else than the difficult, unadjusted, or uncontrolled child of to-day.

The various factors having part in or more or less responsible for crime, involved and complex as they always are, are of different power and intensity and persistence in different individuals. The elementary ones are simply self-love, self-indulgence, self-worship, self-interest, greed, avarice, jealousy, envy, revenge, anger, animosity, pique, passion, lust, and a host of other well-known impulses, together with their compounds—all wrapped up in human character, and in some measure the very warp and woof of human existence.

Whatever the factors and forces and influences that give rise to crime, we have no inherent reason for believing that it is not controllable or conquerable if society is willing to take the nec-

essary pains or to pay the necessary costs. For any genuine attempt in this direction there will have to be summoned all the intelligence, all the patience, all the determination, all the earnestness, all the devotion, all the skill, all the industry, all the resources that society possesses. At the very outset our knowledge will have to be greatly enlarged regarding the nature and conditions of crime, together with the situation and character of the offender in relation thereto. The intricacy and complexity of the entire problem are to be ascertained in far greater measure. A vast number of forces will have to be brought under control. All the shallows and depths, all the innermost recesses of individual character must be gauged and understood, and then subordinated to some fixed standard, or fastened upon some secure anchorage. The faculties and operations of the mind must be assessed in far greater degree, with the due apportionment of those of regular and of irregular mental movements, and with the due care of those of irregular. The multitude of forces that are of the environment and that encircle the human being must be computed and appraised, and their direction so shaped as to turn men from rather than to crime.

Perhaps only with the radical reconstruction of human beings or of human society is the possibility of the elimination of crime to be considered. Perhaps no solution whatever is to be expected this side of the redemption of the individual and of society. The whole matter is the greatest undertaking in the universe which could engage the attention of man, or to which he could address himself. It is in a very large sense the ultimate goal in the social life of man.

In an immediately practical program for dealing with the matter of crime, there may be said to be three great avenues of approach. The first is the proper treatment of those who are mentally incapable of guiding themselves or of keeping themselves from wrongful acts. The second is the betterment or improvement of the conditions of life, with the removal of those forces and factors or surrounding influences that induce or lead to crime. The third is the building up and fortifying of human character so that it may be able to withstand all evil forces that may assail it.

CONTROL OF MENTALLY IRRESPONSIBLE

We cannot know how large a proportion of the population is under mental or nervous disability or is suffering from mental

or nervous disorder of greater or less degree, including those of constitutional psychopathic inferiority, of an emotionally unstable type, and the like. Nor do we fully know how persons of this character are to be discovered. The task of identification would itself be an enormous one, and is possibly beyond our present powers. Society would be called upon to place great confidence in expert knowledge in the matter.

That portion of the population, however, which, for its own sake and for the sake of society, it is found unsafe to permit to be at large should be placed under outside control of some kind, if necessary segregated indefinitely, or otherwise rendered harmless—unless curative methods in the meantime should be brought to light. We are not yet aware how means are to be established to care or to provide for all those in need of such special attention. But if this program could be followed in some large measure, the effects in the reduction of crime in society would be tremendous, in fact incalculable. Steps of some sort will have to be taken sooner or later in weeding out from society or in making ineffective for harm those whose mental or nervous unsoundness is of anti-social bent and who otherwise remain potential doers of damage. As soon as there is under way a movement on a large scale to this end, society will be in position to deal with a very considerable portion of what is called crime and to make headway against it.

The question of mental responsibility for criminal acts will always exist to vex society. In some respects it is but a renewal or restatement of the old question of the free will of man—brought to the fore in the present day in particular by various more or less mechanistic interpretations of human conduct. In a certain sense, crime may be said to be little more than a mental disorder of some kind and in some degree. In the light of modern psychological discoveries, applying to an ever larger portion of the population, the conception of criminal responsibility in general may have to be modified or reformed, at least in some degree on in some particulars.

At some point, however—for those who are “normal,” or for the general run of humankind—there must be recognized the power to discern what is right and what is wrong behavior, or what conduct is harmless to one’s fellow men and what conduct is harmful. Only in the absence of such power is one to be permitted to escape answerability for his misdeeds, or to avoid understanding that society is prepared to resort to adequate measures to deal with him.

IMPROVED ENVIRONMENT FOR LIVING

The second avenue of approach to the treatment of crime by society is through an improved environment in which men may live, an environment so ameliorated that there will be little room in it for the perpetration of crime. This means the creation of a better-ordered society, a better world to live in, a world from which are removed the temptations and snares and quicksands of life and the inducements to and sources of human weakness and downfall—if such a world is possible with its present human builders. There will be set up in it a larger number of real homes, with all that the term means, and more attractive and more contented homes, and less broken and disrupted and cheerless homes; fitter abodes for the habitation of men, and conditions of housing that do not do waste and damage to health and life and spirit; better means for the adjustment of relations between different groups in the population; better schools and better fulfillment of their purposes; fuller and more wholesome provision for play and recreation for young and old; sounder understanding of the uses of leisure time; more propitious health conditions to cause greater contentment with life and more rational living; higher moral planes in the community and greater encouragement for noble living; procuring of good companions and associates instead of evil; substitution of wholesome resorts to be visited for unwholesome; elimination from society of intoxicating liquors and narcotic drugs; putting of an end to commercialized vice or of other money-making institutions conducted at the price of the demoralization and debauchery of men; creation of happier conditions of living that keep men fresh and vigorous, and sane and balanced, and do not require unnatural or harmful excitements to make life appear worth the living; higher economic levels, with greater satisfactions in life for all; avoidance of crushing labor conditions, with their breaking down of men under them, their leading to harmful indulgences, and their creation of brute-like desires and tendencies; less underpaid labor, with its real costs in the disruption of human lives; the affording of continuous employment, and not unemployment, to those who have their labor to be hired, so that withering idleness will be the portion of none; better and fairer systems of money lending, especially for those whose means are not far extended; a more equitable distribution of wealth and of the rewards of industry; a greater and fuller understanding that there is always something in the

world rather to be chosen than silver and gold, that high thinking and plain living are after all the only worth-while jewels to be worn by men, and that wealth wrongly acquired or wrongly used is a hateful thing; the setting of a good and not a bad example by those who have become possessed of great riches, with a recognition of their trusteeship and stewardship in the control of what is but temporarily in their keeping—together with the realization of their faithlessness when their money is applied for cheap and vulgar display or for dissipation or excesses that bring harm with them—and with the further realization of their actual betrayal of the commonwealth when their money is ever employed for corruption, or for the purchase of unfair privileges or of the honor of men; and the undertaking of whatever other activities are necessary to reach and reclaim human waste in the form of the criminal before it is too late. To the extent that such measures can be set on foot or such results brought to pass, to that extent will there be an actual diminution of crime.

HOME AS FACTOR AGAINST CRIME

As crime is in so large a measure, or so essentially, a matter of youth, it being at such time of life that criminal careers are mostly entered upon, it is to the three factors so intimately and profoundly intertwined with the early years of life to which particular consideration is to be devoted—the home, the school, and the playground. It is these three things that are of the utmost avail in preventing the potential criminal from becoming the actual criminal.

In keeping the boy or the girl from the ways that lead to crime or delinquency, society has nothing at all that can compare with the home. In the whole problem it remains of supreme importance. For the proper upbringing of the child it has a place for which there can never be provided an adequate substitute. Nothing can take the place of parental love, concern, care, protection, instruction, example, and inspiration, which are elements of the home relationship. In the home is given the first and the deepest training, the initial schooling of the child. In the home the child receives its earliest and most persistent ideas, habits, attitudes, ambitions, moral conceptions and distinctions, religious impulses, sense of social obligations, and regard for the rights of others. What are absorbed here are most likely to obtain a permanent hold upon him, and to become a part of his

future being. If all is well in the home, if parents do their duty by their child, if they afford him the training which is his by right, if the child comes to love his home and loves to turn to it, then, generally speaking, the child is safe for the future, and society has little to fear on his account. If the home is an unhappy or a broken one, if the child does not receive here his due, if the home proves to be a non-functioning one, then great is likely to be the ill to society. The home is society's first and fundamental bulwark against the forces of crime; it is the home where the critical issue is basically joined.

SCHOOL AS FACTOR

Upon the matter of possible juvenile delinquency, and perhaps also upon the matter of future adult criminality, the school can never have other than a great bearing. A large part of the child's waking hours are in its hands, and under its influences—and at a time when the child's character and interests are subject to almost measureless shaping and molding. Upon its schools society places a heavy responsibility. It expects them to give the child committed to their care an equipment that will make of him a good citizen, and not a potential law-breaker.

An important contribution at the outset of the school to the problem of juvenile delinquency is that during the formative period of life there is given the child something to do—something to engage his attention—at least of negative value in keeping the child out of possible mischief. But also before the schools is an immense positive program. Their work can be made much more interesting and attractive, and of a character to win and hold the child—with less occasion for too early entry, on the one hand, into unpromising or pernicious conditions of labor, or, on the other hand, into idleness of enervating or dissipating nature.

The curriculum may be better adapted to the child's actual needs; more individual attention, together with proper and adequate vocational guidance, may be afforded; suitable vocational training may be provided, so that the child may be fitted for economic independence and have skill for some definite calling. A place may be found for the teaching of citizenship, home making, and the duties of parenthood. The course of study may be so regulated as to meet the requirements of such special groups as the mentally subnormal or those of psychopathic inferiority. Inquiry may be made into the grounds of retarda-

tion, and effort made at their removal. Psychiatric clinics or their equivalent may be established to ascertain betimes any possible mental peculiarities or causes of or tendencies to abnormal behavior. Due physical inspection may insure the child's having as little handicap as possible in his future activities. Proper treatment may be given the unadjusted child, so that he may better keep step with normal children, and may have a better outlook upon life. Proper provision may be made for recreation and the physical development of the child, and a wholesome attitude inculcated towards play and amusement, with all their social values. Special classes may be set up for any exceptional group, so that its particular problems may receive due consideration. An adequate force of attendance officers, or what are better called visiting teachers, may see that none escape the benefits of schooling and education. Better training may be afforded teachers, so that they may have proper equipment and sufficient enthusiasm for their high tasks.

Of so great value and moment to the community is education to be regarded that no extrinsic force, whether premature employment, commercialized amusement, or whatever else may be of such effect, is to be permitted to interfere with the child's schooling. The scope of education is to be so broadened as to afford a continuing means of enlightenment, both for children and for adults, with respect to the anti-social consequences of certain forms of conduct, and with respect to the personal dangers attendant upon certain forms of indulgence or dissipation or licentiousness.

But no system of education is to be deemed complete without direct provision somewhere for moral education. Of such significance and of such moment in the bringing up of the child, and in the matter of its possible wrongdoing, is training of an ethical and religious character that it constitutes a fundamental concern of society. No issue demands more intelligent or more devoted consideration. As a means of setting a child's feet in the right path, and as an immediate and an ultimate preventive of crime, it is of incalculable consequence. Without the inculcation of moral principles, or without insistence upon the basis of one's conduct in moral values or its reference to such values, any real or permanent progress in dealing with the matter of crime or headway against it is frankly out of the question. Relatively seldom does it happen that the way of the transgressor is chosen by the man or boy who has had vital contact with the church or other religious agency. If crime is to be attacked with the

hope of its final conquest or of any considerable reduction in it, a way must be found for bringing every child in the land under organized and methodical religious and moral instruction.

PROPER RECREATION FACILITIES AS FACTOR

The providing of adequate and proper facilities for recreation must be accepted as a definite function of organized society. Play and amusement and diversion are too deeply imbedded as instincts in the human constitution, and are too essential in the fitting and even-handed functioning of the human being, to be thrust aside or set at naught, or be left to chance growth and development. Apart from other considerations, there is a wide relation between them and the existence of crime. Lack of the right kind all too often leads to the creation of the wrong kind—which may have a close connection with movements towards crime.

The conception of recreation is to be taken in a broad sense. It goes beyond means of play or entertainment or outdoor or indoor sport or mere physical exercise, important phases though these are. To be included is the general matter of the use or spending of leisure time—that large proportion of the time of most human beings when not engaged in remunerative tasks or at regular business or employment. This itself is a very large problem, and one that will require much study for a thorough understanding of its implications and its possibilities.

The question of proper facilities for recreation is of the highest consequence in the days of childhood and youth, the days of character establishing. Attention is first to be directed to the child's innate requirements of play, or to the vitality and energies and exuberance of youth. A large program here is to be devised and set on foot, which is to include full provision for organized play and for play leadership. The cost is inconsequential, particularly when compared with possible later criminal treatment and institutional confinement. As a general thing, and without the entrance of special circumstances, recreation facilities and juvenile delinquency are in very close and definite relationship: as one advances, the other recedes—in almost predictable ratio.

Not only is there a distinct sphere for public action in the matter, but there will always remain a vast field for private concern, enterprise, and devotion. With philanthropic, religious, civic, and social welfare agencies and institutions of various

kinds—including Young Men's Christian Associations, social settlements, community centers, neighborhood clubs, and the like—as well as with self-governing organizations of the right type, the work that may be done is simply incalculable, with opportunities that are limitless. They are often in position to wage a winning battle against the influences of the street and of various harmful resorts. The gang spirit in particular, so far as it may come into being, may be taken hold of in season, and piloted aright. Under proper direction or guidance, or with capable, devoted leadership, it may be made a constructive power for untold good.

Means of recreation is not to be confined to children and youth. It is to be laid at the feet of all classes and all groups, for none are to be beyond its need. It is to be at hand and accessible and ready at all times and at all seasons. It is to be employed in larger measure in the home, which will become in consequence a greater center of attraction and of interest. To the farthest possible extent all its health-giving, joy-giving, life-giving properties are to be brought into use and rendered of service—to the end that the forces may be foiled which would turn its impulses towards crime.

DEVELOPMENT OF INDIVIDUAL CHARACTER

The third and last avenue of approach to the problem of dealing with crime in human society is through the building up and strengthening and fortifying of the character of man, to make it adamant to the seductions or to the onslaughts of crime. Without it all other schemes or devices or measures are vain and as naught. Amid all the din and turmoil and confusion of the modern world the human race must never suffer to be hushed or stifled what has been called the still small voice of conscience, but must accord that divine messenger an ever enlarging appeal and power. In all the vast program to make an end of crime never to be forgotten is that silent, solemn, unending combat that is being waged on the battleground of mansoul. As never before must be called upon all the eternal verities of personal manhood, old and forever new—honesty, fair dealing, justice, honor, sobriety, cleanliness, self-control, truthfulness, faithfulness, integrity, incorruptibility, unselfishness, kindness, mercy, love, and whatever else is of good report, or whatever else serves to ennoble or dignify or beautify human living. A far higher valuation will have to be placed upon these

things; a far greater trust will have to be reposed in them. What they show forth will have to enter the heart of every individual and to pervade every phase and sphere of life, and thence pass on for the leavening and transforming of all different groups, and finally of society itself.

One quality in the character of the individual which is to have paramount regard in its bearing upon crime is that of altruism. A very large part of crime, probably much the largest part (among those who are rated as mentally sound), may be said to spring fundamentally or to have its seeds in the lack of that virtue, or in selfishness in its various manifestations, or in the disregard of the rights of others, or in the desire to have one's will or to gain one's ends—especially when there is concerned one's personal appetite or one's personal aggrandizement—at whatever expense or cost to any who happen to stand in the way, with or without any immediate or direct animus toward such. When this bearing is carried to sufficient lengths, there result particular anti-social acts or conduct, possibly in the form of crime. But when men have sufficient regard for brotherly love, or good will, or another's happiness, or the general well-being, or social obligations, or when one's deeds are determined by their reference to or effect upon other persons, or when altruism spreads over selfishness and blots it out, then the strongest weapons are being requisitioned in the warfare against crime.

In the struggle against crime all the moral and educational forces of the world together are to be summoned as to a mighty crusade for the victory of the right over the wrong. Here religion will be of transcendent effect, translating itself as it must into practical ethics and noble living. It must never cease to insist upon personal probity, upon the worth of individual integrity and uprightness of walk—personal factors, but of tremendous social import as well. In all its strivings and in all its exertions it must never cease to affirm, and in trumpet tones, the value of the human soul—its infinite preciousness in the sight of the Heavenly Father. Its message must be one heralding the everlasting issues of life, proclaiming invincible faith in the things unseen, and publishing its glad and mighty tidings of redeeming love.

Religion will also be called upon to set forth the social implications that are forever bound up with it. Through it there must be created a world of high moral and spiritual values, reaching out to all men everywhere. Through it the influence

and example of each are to be reckoned and measured according to how they may move another: what may cause another to offend will have no place in the conduct of men. Through it, finally, whatever in the social order aids or encourages or harbors or fosters or instigates or fomenters or animates or promotes or sustains the making of crime or the making of human beings into criminals will be done away with.

To the extent that such a religion as this takes possession of the hearts of men, to that extent will crime tend to disappear from among them.

LIST OF BOOKS ON CRIME

LIST OF BOOKS ON CRIME

The present list of books on crime is intended to be of a fairly wide variety, with approaches to the subject from different points of view (works principally of the nature of fiction being omitted). Some, but not all, of the works mentioned constitute sources of the present volume. There are included to a certain extent unbound publications, usually such as are of considerable length. Of the publications listed short titles are for the most part employed, but of sufficient character to identify particular works. A number of books published in Great Britain are included. As a general thing, the publications given are of relatively recent date.

For articles in magazines, see current periodical indexes under *Crime*, *Prisons*, etc. See also *Social Science Abstracts*. See, in addition, current bibliographies in *Journal of American Institute of Criminal Law and Criminology*. See, finally, A. F. Kuhlman, *Guide to Material on Crime and Criminal Justice* (1929).

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